

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3
4 IN THE MATTER OF THE GUARDIANSHIP
OVER THE PERSON AND ESTATE OF,

5 ADEN HAILU,

6 An Adult Ward.

7
8 FANUEL GEBREYES,

9 Appellant,

10 vs.

11 PRIME HEALTHCARE SERVICES, LLC dba
12 ST. MARY'S REGIONAL MEDICAL
CENTER,

13 Respondent.

No. 68531

District Court Case No. 15-00125

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15 **NOTICE OF FILING JULY 21, 2015 HEARING TRANSCRIPT**

16 Notwithstanding the requirements of Nev. R. App. P. 9 , Respondent Prime Healthcare
17 Services, LLC dba St. Mary's Regional Medical Center ("St. Mary's"), by and through its
18 counsel of record, Snell & Wilmer LLP, hereby files the transcript from the district court's July
19 21, 2015 hearing, which provides the basis of Appellant's Notice of Appeal and was filed on
20 August 3, 2015.

21 Dated: August 7, 2015

SNELL & WILMER LLP.

22
23 By: 

24 William E. Peterson, No. 1528
25 Janine C. Prupas, No. 9156
50 West Liberty Street, Suite 510
Reno, Nevada 89501

26 *Attorneys for Prime Healthcare Services,*
27 *LLC, dba St., Mary's Regional Medical*
28 *Center*

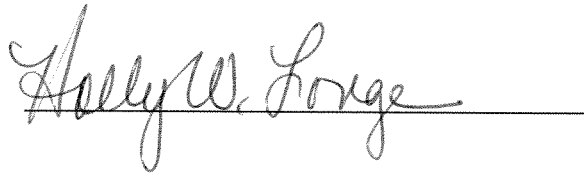
Snell & Wilmer

LLP
LAW OFFICES
50 West Liberty Street, Suite 510
Reno, Nevada 89501
(775) 785-5440

CERTIFICATE OF SERVICE

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William M. O'Mara, Esq.
David C. O'Mara, Esq.
The O'Mara Law Firm, P.C.
311 East Liberty Street
Reno, Nevada 89501



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3 IN THE SECOND JUDICIAL DISTRICT COURT
4 OF THE STATE OF NEVADA
5 IN AND FOR THE COUNTY OF WASHOE

6 -o0o-

7 IN THE MATTER OF THE GUARDIANSHIP :
8 OVER THE PERSON AND ESTATE OF : Case No. GR15-00125
9 ADEN HAILU, :
10 : Dept. No. 12
11 An Adult Ward. :
12 :
13 FANUEL GEBREYES, :
14 :
15 Petitioner, :
16 :
17 vs. :
18 :
19 PRIME HEALTHCARE SERVICES, LLC, :
20 dba ST. MARY'S REGIONAL MEDICAL :
21 CENTER, :
22 :
23 Respondent. :
24 =====

25
TRANSCRIPT OF PROCEEDINGS

July 21, 2015

Reno, Nevada

23 Transcribed by: DIANNE M. BRUMLEY, NV CCR #205
24 California CSR #6796

25 BONANZA REPORTING: 1111 FOREST, RENO, NEVADA
Telephone: (775) 786-7655

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A P P E A R A N C E S

FOR THE PETITIONER:
WILLIAM O'MARA, ESQ.
311 E. Liberty Street
Reno, Nevada 89501

FOR THE RESPONDENT:
Snell & Wilmer
BY: WILLIAM E. PETERSON, ESQ.
JANINE C. PRUPAS, ESQ.
50 W. Liberty Street, Suite 510
Reno, Nevada 89501

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2 RENO, NEVADA, JULY 21, 2015

3 ***

4 THE BAILIFF: Good afternoon, your Honor. This
5 is case number GR15-00125, the Hailu matter.

6 THE COURT: Good afternoon. My name is Frances
7 Doherty. Do you mind saying your names for the record
8 if you're at the front of the table at one of these two
9 tables?

10 MR. O'MARA: My name is William O'Mara. I
11 represent the plaintiff in this case, the Guardian --

12 THE COURT: Pleased to see you.

13 MR. O'MARA: -- Mr. Gebreyes.

14 MR. GEBREYES: Fanuel Gebreyes.

15 MR. PETERSON: Bill Peterson again, your Honor.
16 We represent the defendant in this case, Prime
17 Healthcare. Jacey Prupas is with me. We also have
18 Helen Lidholm who is the CEO of Saint Mary's Hospital;
19 we have Tammy Evans, the director of nursing; and we
20 have Dr. Floreani who is a pulmonologist and has been
21 seeing Aden Hailu since April.

22 THE COURT: All right, thank you, and Dr.
23 Byrne, you're here at the table. You've been a witness
24 in this case and it just is more accommodating for you
25 to sit at this table so you can hear better; is that

1 correct?

2 DR. FLOREANI: That's correct, your Honor.

3 THE COURT: Okay, that's fine. Nice to see you
4 again as well. So counsel, where are we on this case?

5 MR. O'MARA: Your Honor, at the last hearing, I
6 have the transcript redone, so we're here to find out
7 whether or not that physician determines -- not whether,
8 we're not here to determine death or life. We're here
9 to determine that the physician is going to treat the
10 patient, prescribe a protocol for the patient that the
11 Guardian is hoping for and works with the Guardian to
12 accommodate a transfer.

13 In that regard, your Honor, we have Dr. Brian
14 Callister from Reno who I believe is willing to take on
15 the care of the young lady.

16 We've made arrangements with American Med
17 Flight to transport the patient from Saint Mary's
18 Hospital by air. First of all, it goes ground
19 transportation to air, and air transportation to ground
20 down in Las Vegas, and then she will go to St. Rose de
21 Lima Hospital.

22 In Rose de Lima Hospital, Dr. Scott Manthei
23 will take over the care of the young lady. The
24 Pulmonary Associates associated with St. Rose de Lima
25 will take care of the pulmonary problems that she may or

1 may not have.

2 I think that's a broad outline of what has to
3 be done. I will remind the Court that under the
4 statute, doctors don't have any say on what treatment
5 can be done if they have the right -- the parents have
6 the right to have a doctor and if he recommends the
7 treatment, then they can receive that treatment, and
8 that's in 449, NRS 449. So with that, I'll call Dr.
9 Brian Callister.

10 THE COURT: I'm going to hear from Mr.
11 Peterson. I asked for both counsel's report on the
12 status of the case.

13 MR. O'MARA: Sorry.

14 MR. PETERSON: Thank you, your Honor. First of
15 all, I'd like to say that we've been at this for quite
16 some time. We spoke with Mr. O'Mara yesterday, we spoke
17 with him this morning.

18 Not once did he ever give an indication that he
19 was going to call these witnesses. Not once did he
20 provide the information to us that he just informed the
21 Court about. We are hearing it for the first time just
22 as you are hearing it today, and I take umbrage at that
23 sort of practice in this community to begin with.

24 Secondly, there is a written order in the case
25 signed by you, reviewed by Mr. O'Mara, also signed by

1 Mr. O'Mara, and signed by us. That order provides that
2 what he was to provide to you, and to us, by today was a
3 proposed written medical plan and a discharge plan for
4 Aden Hailu. He was supposed to provide to you a written
5 plan regarding a proposed plan of care, including all of
6 the details, some of which he described in general terms
7 just now, none of which has been provided.

8 Furthermore, the plan was supposed to have been
9 prepared after -- according to your order at paragraph
10 one and five, after an evaluation of Aden Hailu which
11 has not occurred, and such evaluation to take place or
12 to be performed by a physician, and a doctor of
13 osteopathic medicine is not a physician or licensed by
14 the Medical Board in the State of Nevada or credentialed
15 at Saint Mary's which is a requirement, and therefore
16 unless we've got a lot more details here and great
17 specificity with actual commitments to include a plan
18 for your Honor since you've indicated that you believe
19 that your duty here is to look after the best interest
20 of Aden Hailu, that's on the assumption, of course, that
21 she is still alive, which she is not, but one of those
22 elements was to determine how all of this was going to
23 happen financially.

24 Mr. O'Mara informed the Court that Medicare
25 stops paying -- he told us last time Medicare stops

1 paying on July 31st, and therefore there's been no
2 mention made of that.

3 All of these, your Honor, basically are kind of
4 surrounding, I guess, the parameters of what you wanted
5 to hear today, but which I think maybe are aside from
6 the point, and Mr. O'Mara has said that is not the point
7 which is whether or not Aden Hailu is alive or dead,
8 which is why I thought that you had ordered, and that
9 Mr. O'Mara had agreed, that there would be a licensed,
10 credentialed, qualified medical practitioner who would
11 perform an evaluation on Aden Hailu to determine whether
12 or not any of this is appropriate. None of that has
13 happened.

14 THE COURT: Can you respond to that, Mr.
15 O'Mara?

16 MR. O'MARA: Yes, your Honor. Obviously I was
17 out of town until yesterday --

18 THE COURT: But you knew that going into it.

19 MR. O'MARA: I did, and I advised the Court of
20 that. I did not hear from my client until yesterday
21 that there was a possible plan. I did not know about
22 the doctors at all until this morning.

23 Dr. Brian Callister, who is a licensed
24 physician in the State of Nevada and is qualified at
25 Saint Mary's Hospital, and I have his curriculum vitae

1 for the Court to review, arrived from Dallas at 10:30
2 this morning and went over to evaluate the young lady.
3 He will testify with regard to that.

4 The plan is just as we indicated, Medicare will
5 take care of the flights -- not Medicare. Medicaid will
6 take care of the flights and the transportation on the
7 ground. Saint Mary's Hospital will then take care of
8 her and it will be out of the hands of Saint Mary's
9 Hospital or Prime and her life will continue.

10 Despite the fact that they say she's brain
11 dead, there is still movement in the brain that can be
12 enforced or helped with thyroid treatment and that was
13 the testimony of Dr. Byrne the last time, so we still
14 have the situation.

15 Unfortunately, I did not get Dr. Callister's
16 report until late this afternoon just before coming into
17 court.

18 THE COURT: Have you given it to Mr. Peterson?

19 MR. O'MARA: I haven't gotten a written report,
20 your Honor. I just received word from him because he
21 had just finished the evaluation of how she is and what
22 she's doing.

23 THE COURT: Is he here now?

24 MR. O'MARA: Yes, your Honor.

25 THE COURT: I think Mr. Peterson has a right to

1 talk to him about what he's going to testify to.

2 MR. O'MARA: I have no problems with that.

3 THE COURT: Let me be very clear. There was
4 medical evidence presented at the last hearing. That
5 medical evidence suggested substantial credible
6 information upon which a reasonable person would rely
7 from Dr. Heide indicating that your child is in a state
8 of continued life support and that she meets the
9 statutory definitions for death should that life support
10 be discontinued, and so what you were to do and what
11 you're doing are two different things.

12 What you were to do was obtain, as offered,
13 additional medical information that would help this
14 Court and help the Guardian reach a conclusion different
15 from what the overwhelming medical evidence had
16 established at the last hearing.

17 Dr. Byrne's evidence was not medically
18 acceptable, was not compelling, was not credible, and
19 was not sufficient for the Court to reach a conclusion
20 consistent with ongoing continued and extended care, so
21 the plan was, Mr. O'Mara, to allow you additional time
22 to provide other credible evidence and a plan of care.

23 I don't have that. I'll listen to your
24 testimony from your witness, but I'm not redirecting
25 this case because redirection inconsistent with medical

1 evidence that will be in the record will then go to
2 other issues, issues of best interest decision making,
3 issues of whether or not you're asking for experimental
4 medical care and treatment approval, so this is not just
5 the issue of whether or not Saint Mary's remains
6 involved in the life of your child or her circumstances.

7 The Court will not facilitate an impractical
8 course of treatment, so you've already not met the
9 expectations of the Court and the order of the Court.

10 I will again allow supplementation of the
11 record to hear what you have, but be aware this is not
12 just about Saint Mary's and whether they're in and out
13 of this case. It is the responsibilities of the
14 Guardian, it is the best interest of your child, it is
15 the medical information in the record and whether or not
16 the Guardian is acting consistently with what is
17 credible in this record.

18 I will not extend impractical, imprudent,
19 unsupported measures, and I had hoped to have that
20 information to suggest that what you're hoping for is
21 none of those, is not impractical, is not imprudent, is
22 not inconsistent with the balance of the evidence. I
23 hope you have that now because that's what I'm looking
24 for.

25 MR. O'MARA: I'll do the best I can, your

1 Honor. The only thing that I would disagree with the
2 Court is the law does not give them the right to decide
3 whether she's dead or not.

4 The Guardian, or the parent, has the right as
5 to whether or not treatment can be given or withheld,
6 and even the case law says that that's true, so it's
7 really his decision, not the Court's decision, and there
8 is a method of care that can be given to her.

9 I don't know that I can show that she's going
10 to be up and running and doing magical things or
11 anything else. That's for the future. All we know is
12 that she's not in a great condition now, but she does
13 have an opportunity to get better.

14 THE COURT: So it's the Court's responsibility
15 to oversee the appropriate judgment of the Guardian, and
16 it's the Guardian's responsibility in a circumstance
17 such as this to evidence that that judgment and decision
18 making is consistent with best interests, with supported
19 evidence, with prudence and reasonableness, so you're
20 right, it's not just Saint Mary's, it's the Guardian and
21 the quality of the Guardian's decision making that the
22 Court is reviewing.

23 So we'll take a break. Mr. Peterson, you may
24 interview the witness if that's your desire, and then
25 we'll hear from the witness and go from there.

1 MR. PETERSON: Would it be permissible, your
2 Honor, since we're talking with experts to talk to the
3 witness with Dr. Floreani with me?

4 THE COURT: Yes, and then Mr. O'Mara may talk
5 to Dr. Floreani if you're going to call Dr. Floreani.

6 MR. PETERSON: Yes. Thank you.

7 (A recess was taken.)

8 THE COURT: All right. Mr. O'Mara?

9 MR. O'MARA: Yes, your Honor. I call Brian
10 Callister to the stand.

11 BRIAN CALLISTER, M.D.

12 having been duly sworn,

13 was examined and testified as follows:

14 EXAMINATION

15 BY MR. O'MARA:

16 Q Please state your name.

17 A Thomas Brian Callister.

18 Q And are you a doctor?

19 A Yes, I'm a physician. I'm a medical doctor,
20 not an osteopathic doctor.

21 Q And how long have you been a doctor?

22 A Since 1988.

23 Q And is this your curriculum vitae?

24 A Yes, it is. Yes, sir.

25 Q Exhibit 1.

1 THE CLERK: This will actually be Exhibit A,
2 Guardian's Exhibit A.

3 THE COURT: Are we continuing the exhibits from
4 last time?

5 THE CLERK: We are, but all of the exhibits
6 from the previous hearing are the interested parties
7 exhibits which are numerical.

8 THE COURT: And just for the record, I don't
9 think any of the exhibits from the last hearing were
10 offered for admission.

11 MR. PETERSON: I offer all my exhibits, your
12 Honor, and I have no objection to his.

13 MR. O'MARA: I have no objection to his
14 exhibits, your Honor.

15 THE COURT: All right. Mr. Peterson's exhibits
16 on behalf of the hospital will be admitted from the last
17 hearing. Exhibit A will be admitted from today's
18 hearing. Go ahead.

19 BY MR. O'MARA:

20 Q Do you have any specialties?

21 A Internal medicine and hospitalist medicine.

22 Q Do you take care of acute care patients?

23 A Yes, I take care of acute care cases.

24 Q Have you had an opportunity to look at Aden
25 Hailu?

1 A Yes. I first met her at around 11:00 a.m. this
2 morning and I was in the vicinity, in and out of her
3 room and performing an evaluation, review and exam
4 between approximately 11:00 a.m. and 1:00 p.m. today.

5 Q And you're aware of what this hearing is about;
6 is that correct?

7 A I believe so, yes.

8 Q You've had conversations with me as well as
9 you've read the Court's order in this particular case?

10 A Yes, I did read the Court's order.

11 Q And you know that Saint Mary's does not wish to
12 care for her any further?

13 A Yes, that's my understanding.

14 Q So is she in a position where she can travel?

15 A I believe she's in a position where she could
16 travel with advanced life support services to another
17 facility or another city if that's what the family
18 wishes.

19 Q Okay. Can you give me your opinion with regard
20 to what her status is?

21 A In brief, I believe that her status is quite
22 grim. I think that her chance of survival, her chance
23 of awakening from her current state is a long shot.
24 However, I do not think that the chance is zero.

25 Q Okay. What initial care would you believe is

1 necessary?

2 A The initial care at this point if further
3 treatment was to be continued would involve tracheostomy
4 and a gastrostomy tube placement in order to continue
5 the mechanical ventilation that she needs. Albeit it's
6 relatively high-risk in her, the alternative is death,
7 so like anything risk versus benefit, I believe the
8 potential benefit of a tracheostomy and G-tube if we are
9 to continue care would be in her best interest.

10 I also believe that different therapies that
11 have been offered that I read proposed in some of the
12 Court's documents by Dr. Byrne, I am not an endocrine
13 expert on the concept of trying what we would call an
14 empiric trial of different modalities of the care.
15 That's different than an experimental therapy.

16 An empiric trial, once again from the point of
17 view of risk versus benefit, there's not really any risk
18 to trying modalities to reduce brain edema and see if
19 there is any response at all.

20 Do I think there would be a response? Probably
21 not. But I cannot say that there would not be a
22 response with certainty, and there lies the difficulty.

23 Q Do you have any other opinions, Doctor?

24 A The other concern that I had was the original
25 electroencephalogram on this patient performed in early

1 April was really pretty different or inconsistent with
2 the findings on the MRI and the transcerebral Dopplers
3 in that the transcerebral Dopplers and the MRI's showed
4 extensive damage at the initial EEG on April 6th and the
5 neurologist's notes, which I know you have the medical
6 record, said it was essentially normal.

7 The electroencephalogram, which by itself is
8 not something that can tell you a patient will recover
9 or not. The electroencephalogram, the EEG, was repeated
10 twice more, two more times in the following
11 approximately a week, but all in early April.

12 It did show deterioration, but what gives me
13 pause is there were still diffuse brain waves. They
14 were abnormal and they were slow, but there were brain
15 waves diffusely recordable throughout the EEG and the
16 neurologist commented on that.

17 Now, is that a sign that should give us hope
18 that she's going to suddenly wake up and recover? No.
19 But it's also something that should give you just enough
20 pause to say you can't say with certainty that her
21 chances are zero.

22 Q So is this the type of thing that you would
23 leave the decision to the parent?

24 MR. PETERSON: I'm going to object to that,
25 your Honor, he's not a doctor that --

1 THE COURT: Sustained. Sustained.

2 MR. O'MARA: That's all the questions I have,
3 your Honor.

4 THE COURT: Mr. Peterson?

5 MR. PETERSON: Thank you, your Honor.

6 CROSS EXAMINATION

7 BY MR. PETERSON:

8 Q And thank you for letting me speak with you
9 earlier.

10 A Sure.

11 Q I just wanted to get a few things clarified,
12 mostly all the things you and I already went over.

13 A Okay.

14 Q The first time you were involved in this case
15 was Sunday night?

16 A By telephone.

17 Q And you got a call from Dr. Walsh, was it?

18 A Tom Walsh, I think that's his name. He's a
19 physician in rural Nevada, I believe in Yerington and
20 Schurz, that had met me in different medical venues or
21 heard me speak, I'm not sure which, but he called me and
22 I actually initially thought he was calling about
23 transferring a patient to Reno, but then he told me it
24 was about an existing patient.

25 Q Okay. And then subsequent to talking with Dr.

1 Walsh, you talked with Mr. O'Mara here and you talked
2 with Dr. Byrne sitting over here on the side?

3 A Next Dr. Byrne called me and gave me his
4 background and perspective on the case. He sent me his
5 statement for the Court, and then I talked to -- the
6 patient's father called me.

7 Q Yes.

8 A And I actually didn't speak to Mr. O'Mara
9 until -- when did we speak?

10 MR. O'MARA: After you got off the plane today.

11 THE WITNESS: That's right, today. I let them
12 know that I would be willing to do an evaluation and
13 give my recommendations, or at least state my opinion of
14 what I thought, but that I was in Dallas, Texas and
15 would not be back until Tuesday morning.

16 BY MR. PETERSON:

17 Q And under no circumstances would you undertake
18 the responsibility for caring for Aden Hailu?

19 A I physically cannot due to my travel schedule
20 and my chief medical officer job.

21 Q So you will not be her doctor?

22 A I will not be her doctor.

23 Q And you have not been her doctor?

24 A I have not been her doctor.

25 Q Okay. Subsequently your next involvement in

1 the case was after the conversations on Sunday night was
2 today, right?

3 A Yes.

4 Q And today you went down to Saint Mary's
5 Hospital at 10:30?

6 A 11:00, right.

7 Q 10:30, 11:00. You spent about two hours there?

8 A Yes.

9 Q In that two-hour period, you looked at some
10 medical records?

11 A Yes.

12 Q And then you also went into look at Aden Hailu
13 and evaluate her?

14 A Correct.

15 Q Okay. And the medical records you looked at
16 were the EEG, correct?

17 A Three of them.

18 Q The MRI?

19 A Yes.

20 Q The apnea test?

21 A Within the progress note of Dr. Bacon. That
22 particular thing is a very common thing and the results
23 are usually incorporated within the progress note of the
24 pulmonary physician, so that was in the progress note of
25 Dr. Bacon on May 28th.

1 Q Did you know she had two apnea tests?

2 A I did not see the second one. I actually saw
3 Dr. Bacon and he pointed out to me that one. He didn't
4 tell me there was another.

5 Q Okay. And nor did Mr. O'Mara, nor did Dr.
6 Byrne, and nor did the father?

7 A No.

8 Q None of them told you he had two apnea tests --
9 she had two apnea tests?

10 A What was the date -- no. What was the date of
11 the second one?

12 Q The next thing you examined was the medication
13 list, right?

14 A Correct.

15 Q And you looked at the neurological notes?

16 A And other progress notes, but a smattering of
17 them. I certainly didn't review every day for the past
18 three-and-a-half months.

19 Q All right. And then you went into Aden Hailu's
20 room, right?

21 A Correct.

22 Q You spent about 20 minutes examining her,
23 correct?

24 A Twenty to 30 minutes, yes.

25 Q The first thing you did was you took an initial

1 look and you did a visual examination of her as she was
2 laying in the bed, correct?

3 A Right, and I looked at her monitor to look at
4 her vital signs and records.

5 Q All right. You examined her lungs?

6 A Yes.

7 Q And you do that the way we all see it on
8 television with the stethoscope?

9 A Yeah.

10 Q Lungs were working?

11 A Yes.

12 Q Which would be consistent with a ventilator,
13 correct?

14 A Yes.

15 Q Then you examined her -- or you did the same
16 thing and listened to her heart? Her heart was working?

17 A Yes.

18 Q Also consistent with being operated under a
19 ventilator?

20 A Not necessarily. A ventilator per se does not
21 keep the heart beating.

22 Q Okay.

23 A If you are not breathing, a lack of lung
24 function can cause your heart to stop, but a heart can
25 stop for other reasons than not having a ventilator.

1 Q You're not the telling the Court that her heart
2 is not -- that her heart is beating independently of the
3 mechanical devices that are keeping it beating? Are you
4 telling the Court that?

5 A Not directly. Indirectly.

6 Q All right. You then -- you're not a
7 neurologist, correct?

8 A No.

9 Q And you're not then familiar with the standards
10 of practice that are applicable to the practice of
11 neurology in the State of Nevada?

12 A I am not intimately familiar on a daily basis
13 as far as reviewing it to have it at the tip of my
14 tongue, no.

15 Q You're not an expert in neurology?

16 A No.

17 Q Nonetheless, you did perform some neurological
18 procedures or tests on her?

19 A Which would be consistent with a board
20 certified internal medicine and hospitalist scope of
21 practice, and interpreting these exams would also be
22 consistent with that.

23 Q Are you familiar with the definition of brain
24 death under the Uniform Determination of Death Act as it
25 exists in Nevada and throughout the United States?

1 A Yes.

2 Q What is it?

3 A I can't read it to you word-for-word, but I'm
4 familiar with it.

5 Q What is your understanding?

6 A My understanding, there's several separate
7 tests that you can use, including an apnea test and
8 other evidence of coma and lack of responsiveness that
9 you can use summarily to determine whether or not a
10 patient meets the criteria for brain death in a legal
11 sense.

12 Q Uniform Determination of Death Act provides for
13 none of those things, do you know that?

14 A Okay. Well, then I'm thinking of something
15 else then.

16 THE COURT: Provides for what, Mr. Peterson? I
17 didn't hear that question fully.

18 BY MR. PETERSON:

19 Q Do you know the Uniform Determination of Death
20 Act provides for none of the things that you just
21 described to the Court?

22 A Okay. Then I'm thinking I guess of the
23 American Association of Neurology criteria or something
24 else.

25 Q Based upon those criteria, do you agree that

1 those standards are, so far as you understand them or
2 know them, the standard medical practice for
3 neurologists in the State of Nevada for determining
4 brain death?

5 A What's the question? I'm sorry.

6 Q The question is, for purposes of applying the
7 medical standards that exist in the State of Nevada, you
8 would agree that the tests promulgated by the American
9 Association -- excuse me, the American Association of
10 Neurologists is the standard of practice in Nevada?

11 MR. O'MARA: Objection, your Honor. I believe
12 that's a legal standard.

13 THE WITNESS: That's what I was going to say.

14 MR. O'MARA: Not a medical standard.

15 MR. PETERSON: I'll ask it a different way,
16 your Honor.

17 BY MR. PETERSON:

18 Q Are you qualified to tell this Court what the
19 medical standards of practice are in the State of Nevada
20 for neurologists?

21 A From a legal definition?

22 Q No, I'm not asking for anything legal.

23 A As a neurologist, no, because I'm not a
24 neurologist.

25 Q All right. Then you would not be able to

1 testify to this Court what the medical standards of
2 practice are for -- the medical standards now, not legal
3 standards, medical standards for neurologists in the
4 State of Nevada?

5 A Not as a neurologist, no.

6 Q You are not familiar with the tests that are
7 established and promulgated by the American Association
8 of Neurologists to determine brain death under the
9 Uniform Act?

10 A I am familiar with them. I am not an expert in
11 them.

12 Q All right. Nonetheless, you did perform some
13 neurological tests or procedures on Aden Hailu, correct?

14 A No procedures.

15 Q Just tests?

16 A No, no tests. I did a physical examination.

17 Q Under your physical examination, you first
18 examined her arm, correct?

19 A Not first, but I did examine her arm.

20 Q And got no neurological response?

21 A No.

22 Q You examined her hand?

23 A Yes.

24 Q Got no neurological response?

25 A No.

1 Q You examined her feet?

2 A Yes.

3 Q Got no neurological response?

4 A No.

5 Q You did a pressure test on her fingers and
6 toes?

7 A Yes.

8 Q You got no neurological response?

9 A Correct.

10 Q You tested the reflex on her knees?

11 A Yes.

12 Q You got no neurological response?

13 A Correct.

14 Q You did a Babinski test?

15 A Yes.

16 Q You got no neurological response?

17 A Correct.

18 Q The Babinski test is a test that you just rub
19 your hand on the plantar area of the foot?

20 A Correct.

21 Q Normally the response you get would be a
22 curling of the foot, correct?

23 A Correct.

24 Q You got none of that, correct?

25 A Yes.

1 Q The examination of the records that you looked
2 at, did you look at the Doppler test?

3 A I looked at the neurologist's report of the
4 Doppler test. I could not find the actual Doppler test
5 itself.

6 Q You were informed that the Doppler test showed
7 that there was no brain flow to the brain -- no blood
8 flow to the brain?

9 A Not to the entire brain, to the cerebral
10 cortex.

11 Q No blood flow to the cerebral cortex generally
12 results in necrosis of the brain, does it not?

13 A Generally, if it's untreated or --

14 Q You would expect Aden Hailu's brain --

15 MR. O'MARA: Can you let him finish, Bill?

16 MR. PETERSON: I'm sorry.

17 THE WITNESS: That depends on interventions and
18 reversibility, and that's where things can get into a
19 little bit more of a gray area.

20 BY MR. PETERSON:

21 Q She has been, under the Doppler test, under a
22 reduced blood flow -- significant reduced blood flow to
23 the brain for many months, correct?

24 A It would appear so.

25 Q Does that not result in necrosis of the brain?

1 A It can.

2 Q You would not -- to a medical degree of
3 certainty, wouldn't you agree with me that if you get
4 reduced blood flow to the brain over a period of months,
5 like three months, you are going to sustain significant
6 necrosis of the brain?

7 A Based on the fact that her last transcranial
8 Doppler was performed in April, at least the one that I
9 reviewed, if there was one more recent I would like to
10 know that, I can tell you that it was reduced, decreased
11 and not flowing to the cortex in April. I can't tell
12 you what it is in May, June or July.

13 Q You checked the ocular -- you checked her --
14 among the neurological tests is an ocular test, is it
15 not?

16 A Right.

17 Q You performed two of those, did you not?

18 A Yes.

19 Q And one of those was to open her eyes and put a
20 cotton swab near the eyes in order to determine whether
21 there was a reflex?

22 A Yes.

23 Q Got none, correct?

24 A Correct.

25 Q The next one is -- I forget the name of it, but

1 you moved the head to the right and to the left checking
2 the pupils of the eyes, correct?

3 A Correct.

4 Q In a normal brain when that happens, the
5 pupils -- when the head turns, the pupils continue to
6 look straight, correct?

7 A Correct.

8 Q That did not happen here, correct?

9 A No.

10 Q That's an indication of brain death, is it not?

11 A It can be one of many, many signs.

12 Q All right. The other --

13 A It cannot be used solely to determine brain
14 death.

15 Q You also did whatever you call the -- I don't
16 want to call it a laser, but the light test on the
17 pupils --

18 A Pupillary reflex.

19 Q Got none, correct?

20 A Right.

21 Q All of those are consistent with brain death,
22 are they not?

23 A They could be.

24 Q I'll ask it again. All of those are consistent
25 with brain death?

1 A They can be.

2 Q They're either consistent or not consistent.

3 A It depends on the situation. We have --

4 Q If you got a response, it would not be
5 consistent with brain death, would it not?

6 A That's true.

7 Q Then if you do not get a response, why wouldn't
8 that be consistent with brain death?

9 A It would be consistent with a severe metabolic
10 encephalopathy as well with severe cerebral edema.

11 Q And none of that is reflected in the medical
12 record, is it?

13 A No.

14 Q And if there was such a thing, you would see it
15 in the medical records, would you not?

16 A Not necessarily.

17 Q Do you have any occasion at all that she
18 suffered from such a thing?

19 A No.

20 Q Thank you.

21 A The one thing I should be able to mention where
22 I think it's very pertinent to your line of questioning,
23 if I may add, is the fact that we have one neurology
24 group and one pulmonary group that's been managing and
25 making the recommendations and the interpretation and

1 clinical opinion was of one particular neurologist.

2 Now, I'm sure he's a fine, upstanding
3 neurologist, but in a situation like this, and this is
4 part of my review of the medical record, I was a little
5 bit surprised that there wasn't an outside neurologist
6 in to evaluate the patient that wasn't having anything
7 to do with the same group or same hospital, and if there
8 was such one, then I didn't see it.

9 Q You're suggesting that Saint Mary's doctors,
10 are, what, incompetent or --

11 A No, not at all.

12 Q They're competent?

13 A Not at all.

14 Q They are competent?

15 A Often we request second opinions in difficult
16 cases or contentious cases.

17 Q You're not challenging the competency of the
18 Saint Mary's physicians, are you?

19 A No, I am not.

20 Q You're suggesting they may be biased?

21 A I don't know.

22 Q All right. Are you familiar with the three
23 cardinal signs of brain death under the standards
24 promulgated by the American Association of Neurology?

25 A I can't repeat them off the top of my head, no.

1 Q Let's talk about coma. Is she in a coma?

2 A Yes.

3 Q Do you recognize a coma as one of the three
4 signs?

5 A Yes.

6 Q Is the coma irreversible?

7 A I don't know.

8 Q To a medical degree of certainty, would you
9 agree that it looks like it's irreversible?

10 A It look like it's irreversible, but I am not
11 certain of that.

12 Q Thank you. After coma, brainstem reflexes, a
13 number of tests to determine brainstem reflexes. You
14 performed some of those, correct?

15 A Yes, I did.

16 Q The brainstem reflex test that you undertook
17 which is part two of the American Association of
18 Neurology test indicates no response, no reflexes from
19 the brainstem, correct?

20 A Correct.

21 Q Consistent with brain death, right?

22 A It can be, yes.

23 Q The last one, apnea test. You only saw the
24 record on one apnea test, right?

25 A From May 28th, correct.

1 Q And the apnea test that was conducted
2 confirmed, if you looked at the record, unequivocally
3 brain death, did it not?

4 A It was consistent with brain death based on
5 those applications.

6 Q Thank you.

7 A Unequivocally, I would not use that term. It
8 is one other piece of information.

9 Q I'm sorry, I did not have an opportunity to
10 examine your background and credentials in detail. I'm
11 not going to go over them, but one thing I was confused
12 about, it looks like you are associated in some way with
13 facilities that take care of patients that are in a
14 vegetative state?

15 A Correct.

16 Q When a patient is in a vegetative state, they
17 are not brain dead; those people do have certain
18 brainstem reflexes or other reflexes to indicate they're
19 not dead, right?

20 A Most of them do. There are always exceptions.

21 Q You found none of those in this patient,
22 though?

23 A No.

24 Q But back to your --

25 MR. O'MARA: Your Honor, would you please allow

1 him to finish his answers?

2 THE COURT: Would you slow down a bit, Mr.
3 Peterson, please?

4 MR. PETERSON: I'm sorry.

5 THE COURT: I'm taking notes.

6 THE WITNESS: The clinical presentation of a
7 patient in a persistent vegetative state can be
8 extremely variable, from many reflexes or all of them
9 being present to many, if not most, or all reflexes
10 being difficult to elicit or even absent, so there's a
11 wide spectrum there which is why there's so many
12 different varieties of tests and clinical exams.

13 That's why there's apnea tests, MRI's and
14 EEG's, by the way, to try to get an overall better
15 picture of what these patients have functioning or not
16 inside their brain.

17 BY MR. PETERSON:

18 Q And all of those tests that you just described
19 for the purposes of which you just testified about were
20 performed and they are consistent with brain death, are
21 they not?

22 A Except for the EEG.

23 Q The EEG was performed before both apnea tests?

24 A I understand.

25 Q And they were early on, like first week of

1 April?

2 A There was three of them in the first two weeks
3 of April.

4 Q And they were gradually deteriorating you said?

5 A They were deteriorating, but they were not
6 without brainwave activity throughout the -- it's a
7 diffuse slowing, diffuse meaning the entire brain.

8 Q Okay. And back to your background and
9 credentials. Are you associated in some way with
10 facilities that care -- take care of for compensation
11 patients like Aden Hailu?

12 A Yes.

13 Q Okay. So you are a direct economic beneficiary
14 of patients like Aden Hailu being discharged?

15 A No, not directly. I'm a salaried employee at a
16 corporate level. I'm a chief medical officer. I get
17 nothing if there's a patient that comes or doesn't come.

18 Q All right. Do you have any knowledge, facts or
19 information as to the mechanics, the details, the
20 procedures for transporting Aden Hailu to Las Vegas to
21 be cared for in a facility in Las Vegas?

22 A The specifics that are set up, or how would it
23 occur? I don't understand the question.

24 Q No, I'm talking about the actual where is she
25 going, who has agreed to take her, what's going to

1 happen to her when she's there?

2 A What I understand --

3 Q From whom?

4 A Mr. O'Mara and Dr. Byrne, is that she would go
5 to St. Rose Hospital in Las Vegas, that there's a
6 pulmonary group down there that is willing to assume her
7 care, and that there's ear, nose and throat doctor
8 that's willing to assume her care and do the
9 tracheostomy.

10 Q Okay. Have you ever spoken personally with Dr.
11 Manthei?

12 A No.

13 Q Do you know who he is?

14 A No.

15 Q Do you know that he is the person that is
16 presumably making arrangements to do all of the things
17 you've just described?

18 A I understood that as of about a half hour ago
19 because I heard he was on the phone.

20 Q Do you know that none of those things have
21 occurred?

22 A I don't know one way or the other.

23 Q Thank you. No further questions.

24 THE COURT: Mr. O'Mara?

25

RE-DIRECT EXAMINATION

BY MR. O'MARA:

Q Would the treatment that has been recommended, is that experimental treatment or empirical?

A I would put it in the category of what we would call an empirical trial. It's not something that would be on an experimental protocol.

Often in cases that are very difficult where there's very little potential downfall because the patient is so seriously ill, physicians will often try things that may be towards the unorthodox, but wouldn't be called experimental.

THE COURT: It would be call empirical?

THE WITNESS: Empirical therapy. So in other words, I guess I should give an example, but unrelated. If I really wasn't sure, if you had a certain infection and we've been worrying about it for weeks, but it's not going away, maybe we do an empiric trial of an antibiotic for a week to see if it made a difference and that might help us tell the difference between a cellulitis or just a rash from an allergy.

THE COURT: And in this case, what would be the empirical trial?

THE WITNESS: One of the things I was reading about was in Dr. Byrne's statement, the consideration of

1 thyroid therapy, but the other part of it that wouldn't
2 be just an empiric trial, and theoretically I haven't
3 seen a lot of data out there, but what I have seen is
4 from a physiologic standpoint, the idea that if thyroid
5 was indeed way too low, reducing swelling of the brain
6 by adding thyroid hormone could potentially help.

7 Do I think that is likely? No. Do I think it
8 is impossible? I can't say that, either.

9 In addition to that, I think there's more
10 standardized therapies that need to happen to reduce
11 risk and continue to improve the condition of the
12 patient.

13 Specifically if care is going to be continued,
14 I believe she does need a tracheostomy and I believe she
15 needs a feeding tube and she needs enteric nutrition.

16 Nutrition through the IV, which she's getting
17 now, is never as good as nutrition through the gut, and
18 so if treatment is to continue, that would be something
19 I think that's not an empiric trial. In a sense it
20 would be changing her nutritional status, but some basic
21 things that I think would need to happen that would
22 happen in a patient that there wasn't this question on.

23 Most patients would have already had a
24 tracheostomy placed in the first week-and-a-half to two
25 weeks of their hospital stay and a feeding tube at the

1 same time.

2 THE COURT: Okay. Go ahead, Mr. O'Mara.

3 BY MR. O'MARA:

4 Q Let me just go into this. As I understand your
5 testimony, as a chief medical officer, it doesn't make
6 any difference what life care facility Aden would go to,
7 it wouldn't have --

8 A She wouldn't have to go to one of our
9 facilities. In fact, St. Rose is a short-term acute
10 care facility, not an LTAC. I work for an LTAC.

11 If she did go to a St. Rose and then they
12 determined that an LTAC was appropriate, assuming that
13 she continued to survive, it would be up to that
14 hospital, the family and the physicians at St. Rose to
15 determine which LTAC was appropriate.

16 There are many, many LTACs in the Las Vegas
17 area. My company is associated with one, and in fact
18 that one is in the extreme northwest, and if I got it
19 right, St. Rose is in the southeast, so they would
20 probably utilize a different LTAC if they indeed chose
21 to go that route.

22 THE COURT: And what is LTAC, sir?

23 THE WITNESS: I'm sorry, long-term acute care,
24 and what that is, the LT confuses people. The long-term
25 does not mean nursing home or skilled nursing.

1 It would be better labeled as extended acute
2 care. It's for people that need acute hospitalization
3 and even ICU level care for weeks and months instead of
4 days or weeks, and the idea is that a seriously ill or
5 medically complex patient, after being in a short-term
6 acute care facility like a Saint Mary's or St. Rose, to
7 continue an acute level of treatment, not opposed to
8 acute downstream nursing home, you would transfer them
9 to this type of facility and they're set up to manage
10 patients, again, for weeks or months, and again, my
11 particular hospital group has one in Reno. We have two
12 satellites.

13 We have one in Las Vegas, but in Las Vegas, I
14 want to say there's at least five or six others, many
15 more, and St. Rose I think generally uses the other
16 LTACs, but my understanding is that if this is to
17 continue, the patient would initially go to a short-term
18 acute care and then they would decide from there what
19 would be best for her and the family as far as location.

20 THE COURT: Do you have the impression that the
21 empirical study will directly benefit Aden, will be of a
22 direct benefit to her?

23 THE WITNESS: Do I think it would? I would
24 guess probably not, but I have a lot of pause. I can't
25 say no, and any time we are faced with something on the

1 medical side, I know it's different than the legal
2 definition, but when there's a doubt and it's life and
3 death, we tend to err on the side of life.

4 THE COURT: Okay. Mr. O'Mara?

5 BY MR. O'MARA:

6 Q If the patient is transported by air, is a
7 critical care nurse and a critical care paramedical
8 sufficient to take care of her while she's in the air?

9 A In my opinion, yes, with the caveat that any
10 transfer of a patient like this is going to increase her
11 risk of an acute event or catastrophic issues en route,
12 so the risk will increase because any time you move a
13 very sick patient, there's risk.

14 Given that elevated risk of the transport,
15 critically ill patients are transferred by air ambulance
16 routinely using critical Care Flight nurses and
17 respiratory therapists.

18 That's how we get all of our patients from the
19 rural hospitals in here. They'll go from a critical
20 care airplane to the critical care ambulance right to
21 the ICU. A lot of times they'll bypass the ER which can
22 be appropriate.

23 MR. O'MARA: That's all the questions I have,
24 your Honor.

25 THE COURT: Any follow-up on my questions that

1 you weren't given an opportunity --

2 MR. PETERSON: Just one, your Honor.

3 RE-CROSS EXAMINATION

4 BY MR. PETERSON:

5 Q Doctor, you testified that you like to err on
6 the side of life, your profession does. I think that's
7 true of all professions, even lawyers.

8 A All right, I'll take your word for it.

9 Q But as I understand it, the sum and substance
10 of your opinion here is basically you think that there's
11 some chance, some remote possibility based upon some
12 aberration that you saw in an EEG in early April that
13 there's a possibility maybe of some improvement or
14 something, is that basically it?

15 A Well, it's not just based on an EEG. In cases
16 like this, you also have to look at her age, her
17 underlying what we call her pre-morbid condition, and
18 was she a healthy young person, not someone with nine
19 decades of deteriorating organs?

20 She certainly had damage, I'm sure, over these
21 months, but the rest of her body -- to get overly
22 simplistic, the rest of her body appears to be
23 functioning quite well. She's having bowel movements,
24 she makes urine. Her skin is in remarkably good
25 condition.

1 In fact, for the different medicines she's been
2 on, I was quite honestly surprised at how good the blood
3 flow was to her hands and feet.

4 Q But all of that is simply because she's being
5 kept alive by the ventilators and --

6 A No. Most people who have been kept alive by a
7 ventilator who are truly brain dead really start to
8 have -- most, not all, start to have a lot of other
9 issues. Not that she hasn't had her issues, but a lot
10 of other signs of deterioration of the rest of the body,
11 different organ failures, necrosis of the hands and
12 feet.

13 Again, not everybody gets all of these things,
14 but I really would have expected more deterioration in
15 her organ systems and her skin, her muscles. She's
16 certainly weak, but --

17 Q Why wouldn't all of that just be consistent
18 with the fact that it's a young body that died?

19 A Even when young bodies lose all brain function,
20 they tend to start to shut down.

21 Q But there isn't a single iota, not a scintilla
22 of evidence that either you deduced yourself or the
23 medical records of any brain function?

24 A Well --

25 Q Answer that question.

1 A Okay. That's not entirely correct. Let me
2 tell you why. We talk about brain function. We really
3 are talking about upper brain level functions. Cerebral
4 cortex, where we think and have our consciousness.
5 Below that, we have the mid brain in a simplistic way.
6 That's where the pituitary and those hormones would be
7 made. Below that, we have what we might call the hind
8 brain or the medulla oblongata. That controls the
9 respiratory center which, as you said, she's not
10 breathing past the ventilator. It also controls the
11 heart.

12 If there was absolutely zero neurologic input
13 from anywhere from the top of the spinal cord above, her
14 heart couldn't beat for very long, or her heart couldn't
15 beat well, or she would need a pacemaker.

16 Q Which would stop beating the minute -- you
17 agree the minute the ventilators are taken off?

18 A But the point is, you still need neurologic
19 input from a higher center to have these things
20 function.

21 Q Doctor, name me one, just one criteria
22 identified or test to be performed as promulgated by the
23 American Association of Neurology that is indicative of
24 anything other than brain death. Give me one.

25 A I don't understand what you're asking. Give

1 you one --

2 Q I want you to identify for me one of the
3 accepted criteria for determining whether or not there's
4 full brain function or not as promulgated by the
5 American Association of Neurology, just one.

6 A No, I don't -- I'm not saying at all that she
7 has full brain function.

8 Q Well --

9 A I'm questioning how much brain function she
10 has, whether it's just hind brain or mid brain, if
11 there's any possibility of recovery of the cortex.

12 Q No, no --

13 A Right now with a non-functioning cortex, all of
14 those tests are going to be abnormal and consistent with
15 brain death by the definition.

16 Q Let me start over again.

17 The Uniform -- I know you're not a lawyer and
18 I'm not going to pretend that you are, but the Uniform
19 Declaration of Death Act promulgated for cases just like
20 this one, people come to court to determine whether or
21 not a person is brain dead or not, can you accept that?

22 A Sure.

23 Q Under the Uniform Act, it applies standard
24 medical practices in a community. We apply here in
25 Nevada the standards that are promulgated by the

1 American Association of Neurology. Can you accept that?

2 A I understand that.

3 Q Do you understand that the American Association
4 of Neurology for purposes of determining brain death
5 have promulgated a series of procedures and tests
6 that --

7 A No, I understand.

8 Q You understand that?

9 A Yeah. I don't read them as bedtime reading,
10 but I'm quite familiar with them.

11 Q Then if you understand all of that, I'm asking
12 you to tell the Court to identify just one of those that
13 would be indicative of anything other than brain death,
14 just one.

15 A By a strict definition, she would meet their
16 category.

17 Q Okay. Then I'm going to restate it my way and
18 if you disagree with me, I want you to tell me why.

19 A Okay.

20 Q The proposition is all of the criteria and
21 standards promulgated by the American Association of
22 Neurology for determining death have been satisfied in
23 this case, and if that is an untrue statement, I want
24 you to tell me why.

25 A I'm not going to say it's -- I would say from a

1 check the box criteria statement, it is true.

2 Q Thank you. That's all I want.

3 A Okay.

4 RE-DIRECT EXAMINATION

5 BY MR. O'MARA:

6 Q And if you didn't check the box, what would
7 your statement be?

8 A I would say that there's enough variables and
9 enough questions based on the condition of her physical
10 body, the EEG's and the fact that no further neurologic
11 testing has been done in several months, and the fact
12 that no outside third party neurologist has looked at
13 her that I would have pause.

14 Do I think that her situation is extremely grim
15 and her chance for recovery is remote, is a long shot?
16 Yes, I do. But once again, what I started with, I don't
17 think it's zero.

18 MR. O'MARA: That's all the questions I have,
19 your Honor.

20 THE COURT: All right. Thank you very much,
21 Doctor. I appreciate it.

22 THE WITNESS: Thank you.

23 THE COURT: Anything further, Mr. O'Mara?

24 MR. O'MARA: I'd like to call Dr. Manthei.
25 He's in Las Vegas, your Honor.

1 THE COURT: That's fine. What was the name
2 again?

3 MR. O'MARA: It's M-a-n-t-h-e-i.

4 THE COURT: I'll ask counsel to remain seated
5 and speak closely to the microphone so the caller may
6 hear you.

7 THE WITNESS: Hi, this is Dr. Manthei.

8 THE COURT: Dr. Manthei, my name is Frances
9 Doherty. I'm the Judge in this case. Can you hear me
10 all right?

11 THE WITNESS: Yes, very well.

12 THE COURT: Thank you for being available. So
13 I understand that you are being called as a witness by
14 one of the parties. I will let Attorney O'Mara lead you
15 through those questions, but first I will ask you to
16 stand up and raise your right hand.

17 SCOTT MANTHEI, M.D.

18 having been duly sworn,

19 was examined and testified as follows:

20 THE COURT: Thank you. Mr. O'Mara?

21 DIRECT EXAMINATION

22 BY MR. O'MARA:

23 Q Please state your name.

24 A Hi. This is Dr. Scott Edward Manthei,
25 M-a-n-t-h-e-i.

1 Q Doctor, are you qualified to be a doctor in the
2 State of Nevada?

3 A Yes.

4 Q Are you a member of the American Medical
5 Association?

6 A No.

7 Q Are you a member of the American Osteopathic
8 Association?

9 A Yes.

10 Q Okay. And is there a difference between the
11 two as far as being certified in the State of Nevada?

12 A They have different certification boards in the
13 State of Nevada.

14 Q And does that limit your practice in any way?

15 A No. My qualifications are certified by the
16 State of Nevada to practice medicine and surgery in the
17 State of Nevada.

18 Q Okay. You sent to me earlier today a copy of
19 your curriculum vitae?

20 A Yes.

21 Q And it has all the certifications?

22 A Correct.

23 Q Has your licensure?

24 A Correct.

25 Q Has your education?

1 A Correct.

2 Q It has your publications?

3 A Correct.

4 Q Your professional experience?

5 A Yes.

6 Q And it has the listing of the various hospitals
7 that you are licensed by? Or not licensed, but --

8 A Yes.

9 Q -- practice. One of those is St. Rose?

10 A Correct.

11 Q And that's in Las Vegas area, in Henderson
12 actually?

13 A Yes. They have three facilities. One is in
14 Las Vegas and two of them are in Henderson.

15 Q Thank you. May I have this admitted?

16 THE COURT: You may, yes.

17 THE WITNESS: I'm sorry, I didn't get the last
18 question.

19 THE COURT: I'm sorry, the attorney is just
20 approaching the bench to admit your vitae and the Court
21 will admit the document without opposition.

22 BY MR. O'MARA:

23 Q Doctor, with whom have you talked about this
24 case?

25 A I was introduced by Dr. Sharon Frank,

1 F-r-a-n-k, as well as Dr. Paul Byrne, B-y-r-n-e, as well
2 as the two attorneys.

3 Q Okay. Did you have any documentation that was
4 delivered to you?

5 A Yes, Dr. Byrne forwarded some medical records
6 about Aden.

7 Q Was that his only affidavit or was that actual
8 medical records?

9 A No, that was just affidavit.

10 Q Okay. Now, can you tell us what it is that
11 you're prepared to do for Aden Hailu?

12 A Yes, a tracheostomy.

13 Q And a feeding tube?

14 A No, I would not -- the feeding tube, that's
15 usually performed by a gastroenterologist.

16 Q And would that be done by St. Rose?

17 A That would be done by a surgeon who has
18 privileges at St. Rose.

19 Q Okay. You have privileges at St. Rose?

20 A Yes.

21 Q And is there any arrangements made through St.
22 Rose to accept this patient?

23 A Not at this time.

24 Q Is it something that you can do or you will do?

25 A It's something that can be done. I just have

1 not been able to arrange timing because she'll need an
2 intensive care bed and they're full right now.

3 Q Okay. So that's something that can be
4 coordinated between the parties?

5 A Yes, I believe so.

6 MR. O'MARA: That's all the questions I have,
7 your Honor.

8 THE COURT: All right. Mr. Peterson?

9 MR. O'MARA: Let me just ask one more.

10 THE COURT: Go right ahead.

11 BY MR. O'MARA:

12 Q On the air transportation on this client, if
13 they have a critical care nurse and a critical care -- I
14 forgot what the other term is, medical person --

15 A I'm sorry, I didn't get the whole question.

16 Q Okay. If they have a critical care nurse
17 available to them, would that be sufficient for the
18 flight?

19 A Correct.

20 Q Okay. No further questions, your Honor.

21 THE COURT: Okay. Mr. Peterson?

22 MR. PETERSON: Just a couple, your Honor.

23 CROSS EXAMINATION

24 BY MR. PETERSON:

25 Q Dr. Manthei, you just got involved in this

1 matter, I believe you told me last weekend?

2 A Two weeks.

3 Q Two weeks, and that's through discussions with
4 Dr. Byrne you said?

5 A Correct.

6 Q So during that two-week period, you did not, if
7 I understand what you said, and I may have
8 misunderstood, you did not review any of Aden Hailu's
9 medical records?

10 A No, I have not.

11 Q And obviously you have not examined Aden Hailu,
12 correct?

13 A No, I have not.

14 Q All right. And obviously whether you're
15 qualified or not, you have no opinion one way or another
16 as to whether or not she is brain dead or not? You have
17 no opinion?

18 A I don't think that's what you asked me before.
19 You asked me if I was qualified to say if she was
20 qualified as brain dead or not.

21 Q I may have asked that. You're not qualified,
22 are you?

23 A I'm not qualified to declare her brain dead,
24 no.

25 Q Okay.

1 A But that's different than an opinion.

2 Q I'm sorry about that. At the present time, you
3 are independently employed, are you not?

4 A Correct.

5 Q And you are -- you have I guess over the last
6 several weeks been attempting to make some sort of
7 arrangements with the hospital for purposes of taking on
8 I think was your terminology, taking on Aden Hailu?

9 A Taking on as in performing the tracheostomy,
10 but not in directing her care.

11 Q All right. Then I misunderstood that as well.
12 But you have not succeeded in that, correct?

13 A Well, like I said, I've been working with the
14 hospital trying to find time and I've also secured a
15 pulmonary specialist to care for the trach and her care
16 until she's transferred to long term.

17 Q My question was, you have not succeeded in
18 accomplishing that yet?

19 A No, I have not secured OR time, no.

20 Q Okay. Do you have any idea at all of the
21 financial arrangements under which any of this could be
22 accomplished?

23 A I have none.

24 THE COURT: What was the answer?

25 THE WITNESS: No, I do not, none.

1 BY MR. PETERSON:

2 Q You have no knowledge or understanding, you
3 have not worked on any plan of discharge or plan of care
4 for Aden Hailu?

5 A Yes, I have.

6 Q Where is that?

7 A At St. Rose Dignity for inpatient care, the
8 intensive care unit under the direction of the pulmonary
9 specialist after a tracheostomy.

10 Q This is what you're working on, what you've
11 already talked about, right?

12 A Correct.

13 Q And again, just to be clear, you're continuing
14 to work on it, but it hasn't happened yet, right?

15 A No.

16 Q No further questions.

17 THE COURT: So Doctor, what are the barriers to
18 that occurring?

19 THE WITNESS: Well, we need approval to have
20 her transferred from the Reno area to the hospital and
21 then the hospital is requesting greater information on
22 long-term care availability in the area before accepting
23 her care.

24 THE COURT: Did you say you have not secured
25 the OR care, is that what you said?

1 THE WITNESS: Right. So in order to admit a
2 patient for a procedure, there has to be an operating
3 room time and that's dependent upon her having a bed at
4 the hospital to recover after the surgical procedure.

5 THE COURT: And what are the challenges in that
6 regard?

7 THE WITNESS: The challenges is the hospital
8 wants to be assured that there is a space for her for
9 long-term care after she's recovered from the surgical
10 procedures.

11 THE COURT: And have there been efforts made to
12 secure that second placement?

13 THE WITNESS: No.

14 THE COURT: Okay. Anything further, Mr.
15 O'Mara?

16 MR. O'MARA: Yes, your Honor.

17 RE-DIRECT EXAMINATION

18 BY MR. O'MARA:

19 Q What will it take to find out what efforts have
20 to be made to get the long-term care after the acute
21 care at St. Rose?

22 A That's usually performed by a nursing
23 supervisor who will gather the payment information as
24 well as the requirements for long-term care, and so they
25 require complete medical records and patient information

1 in order to initiate that, and then I don't know how
2 long it would take to secure long-term care. I've seen
3 it take anywhere from a day or two to a month or two.

4 Q So she would stay in St. Rose Hospital until
5 such time as the long-term care was obtained?

6 A Correct.

7 Q And that would provide adequate care for her
8 while she was in the hospital, correct?

9 A Yes.

10 MR. O'MARA: No further questions, your Honor.

11 THE COURT: And is St. Rose willing to accept
12 her without the security of the placement?

13 THE WITNESS: That they have not agreed to.

14 THE COURT: Okay. And I'm sorry, you may have
15 said this, are you the physician agreeing to perform the
16 tracheotomy?

17 THE WITNESS: Correct.

18 THE COURT: And that's without reviewing the
19 records?

20 THE WITNESS: The records I have reviewed are
21 adequate with the care of the pulmonary specialist, yes.

22 THE COURT: And what would your plan of medical
23 care be?

24 THE WITNESS: As a surgeon, we perform surgical
25 procedures and then we are securing the airway and then

1 we depend upon the subspecialist within pulmonary
2 medicine or internal medicine to care for the patient
3 and the dynamics of the rest of her medical state to
4 assure that the tracheostomy is not only working, but is
5 benefitting her care.

6 THE COURT: And who is that specialist who is
7 going to do that?

8 THE WITNESS: The pulmonary specialists are
9 being determined now, depending on the timing of when
10 the patient would be coming down from Reno.

11 THE COURT: And do you have confidence based on
12 the condition of Miss Aden that she will sustain the
13 surgery that you're contemplating?

14 THE WITNESS: Yes.

15 THE COURT: All right. Anything further, Mr.
16 O'Mara?

17 MR. O'MARA: No, your Honor.

18 THE COURT: Anything further, Mr. Peterson?

19 MR. PETERSON: Yeah.

20 RE-CROSS EXAMINATION

21 BY MR. PETERSON:

22 Q Dr. Manthei, I thought you told me that you had
23 not reviewed any of the medical records. Is that
24 untrue?

25 A No, I didn't say I didn't review the medical

1 records. I reviewed the excerpts and the information
2 provided by others.

3 Q Are you talking about Dr. Byrne?

4 A Correct.

5 Q But you haven't obtained or received any
6 records from Saint Mary's Hospital where she is located
7 now, those medical records?

8 A No, not all of them.

9 Q You are not going to continue treating her
10 after you do the procedure; somebody else is going to do
11 that?

12 A Correct.

13 Q Have you ever spoken with anyone from Saint
14 Mary's about this, like Dr. Heide?

15 A No.

16 Q In your practice, and I have to confess, I'm
17 not that familiar with the standards of practice for
18 osteopathic medicine, would it be appropriate to do a
19 tracheotomy on a person who has been declared or
20 determined to be dead?

21 A The circumstances that you're saying are a case
22 by case basis and would have to be determined on a
23 complete review of the medical records and acceptance of
24 her care, and those parameters are to be determined.

25 Q You're making my question harder than it is.

1 I'm asking you to make an assumption. The assumption
2 I'm asking you to make is that under standards
3 promulgated by the American Association of Neurology,
4 Aden Hailu is dead. Do you understand the assumption
5 I'm asking you to make?

6 A Yeah, but I'm not willing to make an assumption
7 on medical care, so theoretically I'm not willing to
8 accept that. Any time a surgical procedure is being
9 contemplated, we look at the care of the patient and
10 will it benefit and is it clinically indicated.

11 Q Let's --

12 A I'm not able to declare whether she's brain
13 dead or not --

14 Q I'm not asking you to do that.

15 A -- so I'm not willing to accept that
16 theoretical.

17 Q Doctor, please listen to me. I'm asking you to
18 assume a fact. I'm not asking you to agree that it's
19 true.

20 MR. O'MARA: The question has been asked and
21 answered. He doesn't assume medical care.

22 THE COURT: Go ahead, Mr. Peterson.

23 BY MR. PETERSON:

24 Q Doctor, I know you understand what an
25 assumption is. I'm not asking you to agree with me that

1 the assumption -- I'm asking you to assume a fact, okay?
2 You understand that?

3 A Yes, but you're asking me the exact same thing
4 of making a clinical judgment on assumption, and I'm not
5 willing to make a judgment on an assumption.

6 Q I think you're arguing with me, Doctor.
7 Doctor, I'm asking you to make an assumption that a Dr.
8 Heide -- make this assumption for me. I know it did not
9 happen. I'm asking you to assume that it did. It's an
10 intellectual game. I'm asking you to assume --

11 MR. O'MARA: Objection, your Honor.

12 THE COURT: Sustained. It's not an
13 intellectual game. Go ahead, Mr. Peterson.

14 BY MR. PETERSON:

15 Q I'm asking you to assume that the doctor that
16 is in charge of this case, Dr. Heide, has informed you
17 that Aden Hailu has been determined to be dead under
18 standards promulgated by the American Association of
19 Neurology. Do you understand the assumption that I'm
20 asking you to make?

21 A Yes.

22 Q Based on that assumption, would it be
23 appropriate as a doctor of osteopath -- or as an
24 osteopath to perform a tracheotomy on such a person?

25 A I am not willing to make a clinical judgment on

1 an assumption of care. It will be based on clear
2 medical evidence and the physical status of the patient.

3 Q So are you telling me then, Doctor, that even
4 though the assumption that I'm asking you to make, and
5 that is, that Dr. Heide has told you that she is
6 clinically brain dead, that you would not accept that
7 assumption; you would just want to do your own
8 examination to make that determination, is that what
9 you're testifying to?

10 A No, I'm not testifying to that at all. I'm
11 telling you that I am not going to base my clinical
12 judgments on an assumption, and so there is no
13 theoretical.

14 We deal with absolutes, and so that will be
15 based on clear medical evidence that the tracheostomy is
16 indicated, and I've indicated I'm willing to do the
17 tracheostomy, but I'm not willing to make a clinical
18 decision on whether she's brain dead or not.

19 Q A couple more questions, Doctor. You're not a
20 college graduate, are you?

21 A Actually, I did not get a degree in college. I
22 went into medical school early.

23 Q And you told the Judge here that you're not a
24 member of the American Medical Association?

25 A I don't believe I am, no.

1 Q Even though your curriculum vitae says that you
2 are?

3 A I may have been at that time, but currently I
4 do not have a membership in the American Medical
5 Association.

6 Q I don't have any further questions.

7 THE COURT: So this is the Judge again. Are
8 you able to say today that a tracheotomy is indicated
9 based on the medical evidence that you have?

10 THE WITNESS: Yes. From what I have read as
11 provided by Dr. Byrne, I am saying that clinically the
12 tracheostomy will benefit her airway and is clinically
13 indicated.

14 THE COURT: Have you read the medical
15 records -- separate and apart from Dr. Byrne's
16 recommendation, have you read the medical records before
17 reaching that conclusion?

18 THE WITNESS: No.

19 THE COURT: Is there a possibility your
20 conclusion would change if you read all of the records?

21 THE WITNESS: That is always a possibility as
22 we get further into this, that if there is additional
23 medical information that is provided, that that decision
24 could change.

25 THE COURT: Are you interested in the

1 neurological information and medical evidence in
2 relation to Aden?

3 THE WITNESS: Yes.

4 THE COURT: Do you realize this Court has been
5 given medical testimony from a neurologist that suggests
6 she meets the definition -- the statutory and medical
7 definition of death?

8 THE WITNESS: Yes, I'm aware of that.

9 THE COURT: And you have no hesitation today
10 saying that a tracheotomy is indicated?

11 THE WITNESS: With the information that I've
12 been provided, no, I think a tracheostomy is indicated.

13 THE COURT: Okay. Mr. O'Mara, anything
14 further?

15 MR. O'MARA: No, your Honor.

16 THE COURT: Doctor, thank you very much for
17 being available on short notice.

18 THE WITNESS: You're very welcome.

19 THE COURT: All right, bye-bye. Anything
20 further, Mr. O'Mara?

21 MR. O'MARA: I'll just call Mr. -- of course,
22 we can call the co-guardian who would agree to the
23 recommendations that he's made, but she's in Russia and
24 I understand that we can't get it in this room.

25 THE COURT: Did you recall the discussion of

1 having the co-guardian participate in the affidavit at
2 our last hearing after the hearing on how we were going
3 to have her involvement represented without objection by
4 Mr. Peterson? Do you recall that?

5 MR. O'MARA: I do not, your Honor. I'm sorry.

6 THE COURT: All right. Did you make
7 arrangements or make any request to try to have this
8 Court make the co-guardian available before today?

9 MR. O'MARA: I thought we could call. I talked
10 to Mr. Gebreyes and he indicated that he talks to her on
11 the cell phone, so I figured that a cell phone could be
12 used here for the purposes of asking that simple
13 question.

14 THE COURT: Okay. Sir, do you mind coming up
15 to the witness stand? This is a continuation from the
16 last hearing, so you're still under oath. You're
17 comfortable with that, aren't you?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Okay. Have a seat, thank you.

20 MR. GEBREYES

21 having been previously sworn,
22 was examined and testified as follows:

23 THE COURT: Okay, Mr. O'Mara, you're free to --
24
25

1 DIRECT EXAMINATION

2 BY MR. O'MARA:

3 Q Have you talked to the co-guardian?

4 A Yes, I did. I have talked to my niece who is a
5 co-guardian. Her name is Metsihate.

6 Q And have you talked to her on the cell phone?

7 A Yes, I did. Actually, just before court break.

8 Q Did you make arrangements for her to talk on
9 the telephone?10 A Well, yes, I did, but I find out that the Court
11 use only a landline which I believe makes it difficult
12 to --13 THE COURT: So I don't know about this issue.
14 I don't want it on the record that the Court is denying
15 you access to a witness. Did you call the Court ahead
16 of time to make arrangement to have a telephonic
17 participation by someone in Russia, did you do that, Mr.
18 O'Mara?

19 MR. O'MARA: No, I did not.

20 THE COURT: All right. I don't know what
21 you're asking or saying otherwise. All I know is the
22 Court has not been contacted ahead of time to make
23 arrangements for a Russian witness, so if Mr. Peterson
24 is going to allow testimony from this witness without
25 hearsay objection about the position of the other

1 co-guardian on this matter, then that's fine.

2 MR. O'MARA: Can we use the cell phone and put
3 it on speaker phone so that the Court can hear her
4 testify?

5 THE COURT: Are you going to object to the
6 hearsay --

7 MR. PETERSON: No, your Honor. I wish I can
8 think of a hearsay objection so you can get me off the
9 hook. I'm not going to object.

10 THE COURT: All right, then I'll allow it.
11 Then have him represent what his understanding is of the
12 co-guardian's position in this case.

13 BY MR. O'MARA:

14 Q Did you hear the question from the Judge?

15 A No.

16 Q Please explain what the co-guardian's position
17 is with regard to the care of Aden.

18 A Well, she want her care to continue and she's
19 100 percent onboard with everything that I said, and I
20 did talk to her, as I said, a few minutes ago and I
21 explained what the situation is and she's aware of it.

22 Q She's aware that she would be transported out
23 of Saint Mary's by land -- by ambulance to the air, that
24 she would be transferred by air with the ventilator down
25 to Las Vegas, and then she would be transported on land

1 to St. Rose?

2 A Yes. I explained each and every fold which is
3 exactly what you just said, that she will be transported
4 to the airport by land transport and then by air down in
5 Las Vegas, and she will be admitted to a hospital which
6 is St. Rose and then care will be continued from there,
7 and I did explain that to her and she agreed and she's
8 very much aware of it.

9 MR. O'MARA: That's as far as I wish to go with
10 regard to the co-guardian, your Honor.

11 THE COURT: That's fine.

12 BY MR. O'MARA:

13 Q And you personally as a guardian are in
14 agreement with that treatment?

15 A Absolutely, yes.

16 Q Okay. That's all the questions I have of this
17 gentleman.

18 THE COURT: Mr. Peterson?

19 MR. PETERSON: Just a couple, your Honor.

20 CROSS EXAMINATION

21 BY MR. PETERSON:

22 Q When did -- I'm sorry, what is your --

23 A My niece, her name is Miss Asfaw.

24 Q When did she last see Aden Hailu, when did she
25 leave?

1 A I'd say about a month ago.

2 Q So sometime in June?

3 A Yes.

4 Q Did you speak with her about the prior
5 proceedings, what happened in court here last time?

6 A Yes.

7 Q Did you tell her about Dr. Heide's testimony?

8 A She knows that all along.

9 Q She knew that all along?

10 A Yes.

11 Q Okay. No further questions.

12 THE COURT: Any further, Mr. O'Mara?

13 MR. O'MARA: No, your Honor.

14 THE COURT: Okay. You can have a seat, sir.
15 Anything further, Mr. O'Mara?

16 MR. O'MARA: The only thing I can tell you is
17 that I made arrangements with regard to the air flight
18 from American Medical Air in Reno here to make the
19 transfer available and the agreement has been made. He
20 has to sign the contract, but what happens is that they
21 bill Medicaid first, and then if there's a refusal by
22 Medicaid, then he pays for the transportation.

23 THE COURT: Has Medicaid been approved right
24 now for the hospitalization?

25 MR. O'MARA: Yes. For the hospitalization,

1 yes, but not for the air transport.

2 THE COURT: All right. That's fine. Mr.
3 Peterson, anything?

4 MR. PETERSON: We have two things, your Honor.
5 You asked me to bring the Ethics Committee minutes.

6 THE COURT: Are you going to object to that,
7 Mr. O'Mara?

8 MR. O'MARA: I haven't read it. This is the
9 first time he gave it to me.

10 THE COURT: I'll give you time to read it.

11 MR. O'MARA: Thank you, your Honor.

12 MR. PETERSON: And I can authenticate it, your
13 Honor.

14 THE COURT: You can?

15 MR. PETERSON: I can. The witness is here, but
16 if there's no objection, I see no point in it.

17 THE COURT: Is there any other documentary
18 evidence you plan on admitting?

19 MR. PETERSON: No, your Honor.

20 THE COURT: Let's take a five minute break or
21 so and let Mr. O'Mara read the document. I won't read
22 it until Mr. O'Mara has.

23 (A recess was taken.)

24 THE COURT: Did you get a chance to read that,
25 Mr. O'Mara?

1 MR. O'MARA: I did read it, your Honor.

2 THE COURT: And are you maintaining your
3 position that you're not objecting to exhibits?

4 MR. O'MARA: Well, yes and no, but I'm not sure
5 that the exhibit says anything because the last two
6 pages which talks about an evaluation is not filled out
7 and nobody signed it, but I think it's well within the
8 Court's knowledge and they should -- the Court should be
9 aware of it, but I do want to comment on it.

10 THE COURT: All right. I'll let Mr. Peterson
11 do so first if he wishes.

12 MR. PETERSON: I just wanted to -- your Honor,
13 part of what you asked me to do is provide -- you asked
14 whether we had one and whether I would provide it and
15 that's really all this is.

16 I don't think there's anything in here of any
17 substance that I really wanted to elicit any testimony
18 on. It's just more corroborative of stuff you've
19 already heard.

20 You'll note that Dr. Heide is on the committee
21 and you heard his testimony.

22 THE COURT: This looks like the ethics
23 discussion with respect to performing the apnea test; is
24 that correct?

25 MR. PETERSON: That is correct, your Honor, and

1 as Dr. Heide testified, that apnea test was conducted.
2 It's in the testimony in the record. Also, in testimony
3 in the record is that there was a second apnea test
4 conducted and that was by Dr. Gomez.

5 THE COURT: We didn't hear very much
6 information from Dr. Gomez's report other than --

7 MR. PETERSON: Now that you mention it, I'm
8 trying to think how the testimony came in. I know that
9 what I represented to the Court, which I'll represent is
10 true, that Dr. Gomez was retained by Cal Dunlap, the
11 predecessor counsel for the petitioner, and he was
12 discharged by the petitioner, but nonetheless performed
13 the apnea test and it's part of the medical records. I
14 think Dr. Heide testified to it, but --

15 THE COURT: Right. I don't recall, so does the
16 record reflect whether Dr. Gomez was a neurologist?

17 MR. PETERSON: The record doesn't reflect that
18 because I don't believe that he is a neurologist.

19 THE COURT: Okay.

20 UNIDENTIFIED SPEAKER: General and trauma
21 surgeon.

22 THE COURT: Anything further, Mr. Peterson?

23 MR. PETERSON: Yes, your Honor. We wanted to
24 call just very briefly to confirm the status quo if
25 you're interested in hearing that only, and that would

1 be Dr. Floreani.

2 THE COURT: All right.

3 ANTHONY FLOREANI, M.D.

4 having been duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PETERSON:

8 Q Dr. Floreani, please tell the Court who you
9 are.

10 A I'm Anthony Floreani, medical doctor, pulmonary
11 doctor who takes care of patients in the critical care
12 unit, ICU unit, and I've taken care of Aden on a number
13 of occasions since she's been in the intensive care
14 unit, including the night that she came in from the
15 surgery following her surgery.

16 Q So at least in some respects, Aden Hailu has
17 been under your care from the time she entered the
18 hospital in April of this year to today; is that right?

19 A Yes. Intermittently, yes, including all of
20 last week.

21 Q Okay. Now, obviously you are not a
22 neurologist, you're a pulmonologist; is that correct?

23 A Right, I am not a neurologist.

24 Q But nonetheless, Aden has been under your care
25 for the period of time that I just described for the

1 last three months or so?

2 A Yes, sir.

3 Q All right. And just cutting right to the
4 chase, you're already aware, Doctor, of what had
5 transpired with her care and treatment in the past, are
6 you not?

7 A I am.

8 Q And you are aware that she was determined to be
9 brain dead by Dr. Heide who performed the neurological
10 test?

11 A Unfortunately, yes, I am.

12 Q All right. And you're familiar with those
13 tests yourself, are you not?

14 A I am, including the UDDA.

15 Q Say the last one?

16 A The Uniform --

17 Q Yes, all right. And actually, the apnea test
18 was performed by a pulmonologist, your partner; is that
19 correct?

20 A One of my partners, Dr. Bacon.

21 Q And you're aware that based on the clinical
22 examination and the tests performed by Dr. Heide and
23 others, that the hospital -- that Dr. Heide has
24 concluded that Aden Hailu meets the definition of brain
25 death under the Uniform Act?

1 A Yes.

2 Q All right. And Dr. Heide, unfortunately, could
3 not be with us today, but since you have been seeing
4 Aden Hailu for this entire period of time, could you
5 tell the Court whether there has been absolutely any
6 change whatsoever in her situation or condition since we
7 were last in court which was about a month ago?

8 A In terms of neurologically?

9 Q Yes.

10 A No, there has been no change.

11 Q All right. I'm detecting a little hesitation
12 and I'm almost afraid to ask, but I know the Judge with
13 will. What do you mean by not neurologically?

14 A Well, I mean a lot has been stated about her
15 skin and having urine output and her heart is beating.
16 Those things will continue in this state even if someone
17 is declared brain dead.

18 I would say that in terms of her neurological
19 status, that based on the criteria from established
20 consensus guidelines by the American Academy of
21 Neurology, as well as other Academies of other
22 countries, that components of brain death were met
23 before at a certain point in her care and have continued
24 to be met, that being a persistent coma that has not
25 changed off of any sedation.

1 Secondly, an abnormal neurological exam. That
2 is, the purview of not only a neurologist, but has been
3 suggested other individuals such as myself and other
4 internists who take care of patients in the ICU; the
5 absence of any reflex activity; the absence of any
6 response to verbal and physical or tactile stimuli; and
7 an apnea test.

8 Those are the major determinants of the brain
9 death. The prior EEG, the prior MRI really do not --
10 are not considered primary determinants of brain death
11 by the established consensus and evidence-based
12 criteria.

13 Q Okay. Those being essentially three, the
14 coma --

15 A The coma, the exam that is consistent with
16 brain death, and an apnea test that shows no voluntary
17 ventilation or spontaneous breaths during the test with
18 an appropriate increase in carbon dioxide indicating
19 absolutely no ventilation during the period of the test.

20 The test done by Dr. Bacon was done by the book
21 exactly how you should do it and determined that she had
22 no breathing for ten minutes and that her carbon dioxide
23 increased from 40 to over 100. That is not compatible
24 with brainstem activity, and unfortunately and
25 tragically it is not compatible with human life.

1 Q Now, you heard Dr. Callister testify; you were
2 here in court when that happened?

3 A Yes.

4 Q All right. And how we all try to make -- if
5 we're going to err, we err on the side of life, you
6 heard that testimony?

7 A Yes.

8 Q I would ask you your opinion to a reasonable --
9 do you have an opinion about whether or not Aden Hailu
10 is dead as defined under the Uniform Act, meaning no
11 brain function to a reasonable degree of medical
12 certainty?

13 A Well, unfortunately -- let me put it this way:
14 We can all have opinions. I struggle with this opinion.
15 I struggle with Aden.

16 I have a 22-year-old daughter who I love and I
17 can't imagine, I can't imagine what her father has been
18 going through, so I give great pause to any
19 consideration of brain death.

20 The reason we have evidence-based guidelines
21 and consensus-based guidelines is so that we don't offer
22 opinion, that we have some guidelines to help us as a
23 template in the most horrible decision that we have to
24 make, to have a young person in the youth around us die
25 like this, so we need those guidelines. So based on

1 those guidelines, it's irrelevant what my opinion is.

2 What's important is that at the time her exam
3 evolved and there was a point in time where it became
4 very evident that things were wrong and that there might
5 be brain death. Subsequent exam was consistent, and the
6 apnea test showing no evidence of brain function is,
7 unfortunately, and I was -- no one was happy to see that
8 test be the way it was, shows no evidence of breathing.

9 Aden has a pulse, she has a blood pressure.
10 Dr. Callister is right. There is intrinsic beating in
11 the heart, but if you remove Aden from life support, she
12 will not breathe as evidenced by the apnea testing.

13 Her carbon dioxide levels will predictably and
14 progressively rise to a point where she will develop a
15 severe respiratory acidosis which will cause her heart
16 to go into arrhythmias and subsequently go into asystole
17 or stop beating. That is what's keeping her alive.

18 The fact that her skin looks the way it is, the
19 fact that she looks so well is because she's a
20 beautiful -- or was a beautiful young woman, a beautiful
21 young woman who has gotten incredibly good care by the
22 nursing staff, respiratory therapists and the physicians
23 at Saint Mary's. She's been in a bed for
24 three-and-a-half months without a bedsore. That's
25 remarkable.

1 Q So then once again, thank you for that answer.
2 I just want to make it clear for the record. Your
3 opinion as to -- I understand we can all have opinions,
4 you want to apply the clinical diagnosis. To a
5 reasonable degree of medical certainty, does she satisfy
6 the definition of brain dead?

7 A Yes, unfortunately she does.

8 Q Thank you very much, Doctor.

9 THE COURT: Mr. O'Mara?

10 MR. O'MARA: I have a couple questions, your
11 Honor. Can we show him the ethical report?

12 THE COURT: Yes.

13 CROSS EXAMINATION

14 BY MR. O'MARA:

15 Q I show you Exhibit 8. Are you familiar with
16 that document?

17 A I'm familiar with this policy and procedure in
18 general.

19 Q Okay, and that's good. Just so we understand
20 what it is, the first three pages are the hospital's
21 policy; is that correct?

22 A Yes.

23 Q The second two pages are the actual case
24 consultation form; is that correct?

25 A That's what it looks like, yes.

1 Q And then the last two pages are the Ethics
2 Committee report?

3 A Yes.

4 Q Or evaluation and assessment, correct?

5 A Yes.

6 Q Would you look at the -- if you look at the
7 ethics case consultation form, it shows that it was
8 requested on 4-16-15 and that it was reviewed on
9 4-18-15. Do you see that?

10 A Uh-huh.

11 Q Do you understand that to mean that there was a
12 request and then they had the hearing on 4-18?

13 A That's what it appears.

14 Q Okay. And then the consult was requested by
15 Dr. Defew. She's a hospitalist, right?

16 A She's an internist and hospitalist, yes.

17 Q And she was caring for Aden?

18 A Yes.

19 Q And then there was Dr. Mashour, but that's not
20 really the correct spelling of the name?

21 A Yes, it's M-a-s-h-o-u-r.

22 Q And he's a member of your group?

23 A He is one of my colleagues who was rounding in
24 the intensive care unit for a week at that time.

25 Q Right. And then Dr. Heide is the gentleman

1 that testified here earlier?

2 A Correct.

3 Q Okay. I notice on the committee, there's
4 only -- well, there's two doctors, Dr. Defew who was a
5 treating physician, and then there was Dr. Brian Barnes.
6 He's not a neurologist, is he?

7 A No, I do not believe he is.

8 Q He's actually an ER specialist?

9 A Right. Brian Barnes, emergency room physician.

10 Q So he's not internal medicine, he's not in your
11 field at all?

12 A No.

13 Q He's just an ER okay. And then Dr. Defew,
14 she's the treating physician so she would be part of the
15 committee, so she could explain the situation, correct?

16 A Correct.

17 Q Okay. And then nobody signed this consult, so
18 we don't know what it was that they did?

19 A I don't see it signed, you're correct.

20 Q Okay. And then the recommendation on this was
21 just to perform an apnea test, correct?

22 A That's what it says.

23 Q And since it was on the 18th that they got
24 permission, why did they do the apnea test on the 16th?

25 A I don't know of any apnea test that was done on

1 the 16th. It was done in May by Dr. Bacon.

2 Q That was the second one.

3 A I'm not aware of any apnea test that was done
4 on the 16th.

5 Q Okay. Do you know why the record shows that
6 she was clinically determined brain dead on 4-16 then?

7 A I'm only speculating, so it should go on the
8 record that I'm speculating. That had to do with Dr.
9 Heide's evaluation at that time.

10 Q Okay.

11 A That preceded the apnea testing later done.

12 Q Okay. And if I understand correctly from this,
13 the recommendation was to obtain permission to perform
14 the apnea test in order to provide additional criteria
15 for brain dead confirmation, correct?

16 A Correct.

17 Q And it was also recommended that they seek
18 legal consultation for guidance?

19 A That's what it says.

20 Q Okay. That's all the questions I have, your
21 Honor.

22 MR. PETERSON: Nothing, your Honor.

23 THE COURT: All right. Thank you, Doctor.
24 Anything further, Mr. Peterson?

25 MR. PETERSON: Nothing, your Honor.

1 THE COURT: Anything further, Mr. O'Mara?

2 MR. O'MARA: No, your Honor.

3 THE COURT: Okay. Would you summarize your
4 positions for the Court?

5 MR. O'MARA: Yes, your Honor. The law provides
6 in 449.626 that the parents of the patient are the ones
7 to make decisions with regard to withdrawal or the
8 authorization for treatment.

9 The Guardian here, who is also the parent of
10 the child, has authorized additional treatment, is
11 denied the withdraw of treatment and now the Saint
12 Mary's group wishes to countermand that decision.

13 This is a hard question because we're dealing
14 with life and death. We have doctors on both sides
15 vehement about their positions. We have a situation
16 where we have a life on one side or death on the other
17 side, and all of the doctors have indicated when there's
18 a question, we lean towards life. That's what the
19 Guardian wants is an opportunity to do so. So what is
20 it that we need?

21 We need to get her to a facility that's willing
22 to provide those procedures. One, Saint Mary's has
23 refused to do so. We made arrangements with American
24 Medical -- Med Flight I guess it's called to transport
25 her on the ground and in the air to Las Vegas to St.

1 Rose. We have a problem with St. Rose because there's
2 no beds available right now, but that's a transient
3 situation.

4 So we eliminate the problem with Saint Mary's
5 as a third party interest because once the child is
6 moved from that hospital, they're no longer involved or
7 required to do anything.

8 The second thing, and I want to get through
9 this quickly, is the status quo is the same as it was on
10 the time of the apnea test. The records I read
11 indicated 4-16, but the doctor today just testified that
12 it was in May that he saw Dr. Bacon's apnea test, but
13 the interesting part of it is Dr. Callister's statement
14 about nothing else has changed.

15 Her skin is still good, she's still passing
16 urine, she's still passing her bowel movements. Those
17 things aren't geared on the ventilator. They have to
18 have something else in the lower part of the brain that
19 signals those things to work. It's not caused by the
20 breathing phenomenon, so we see some type of brain
21 activity.

22 Even Dr. Callister said it was diffuse -- it
23 was really -- in the EEG originally it was okay, and
24 then it got diffuse, but there was always that action.
25 Then we have the ethics report which, to me, is what

1 they were doing was they were covering up the fact that
2 the apnea report two days before they got permission to
3 do so, or got a legal opinion to do so.

4 It's irrelevant at this point because what
5 we're concerned about is the life and death of this
6 young lady, and when you talk about life and death,
7 there isn't any question. There is no question at all.
8 The question is, you have to lean towards life and we
9 have two doctors, three doctors that have testified.

10 One has been made out to be, what do they call
11 it, a crazy, which is not true. He's different because
12 he's done different research which the other doctors
13 have not done, but they disagree with him. That doesn't
14 make him a crazy.

15 He's involved with life. Dr. Callister is
16 involved with life. Dr. Manthei is involved with life.
17 That's three doctors that have indicated life is
18 available for this young lady. We need that treatment.
19 If we don't get the treatment, obviously she will die,
20 but the question is, can we get treatment which Saint
21 Mary's has basically forestalled all this time.

22 Dr. Callister indicated in his testimony, and
23 nobody has denied this, that the tracheotomy should have
24 been done between the 8th and the 10th day. We're still
25 asking for it. We need that treatment. We need the

1 feeding tube.

2 Where can we get it? We can get it if we are
3 allowed to transport her out of Las Vegas and down to
4 Las Vegas to St. Rose. Thank you, your Honor.

5 THE COURT: Thank you, Mr. O'Mara. Mr.
6 Peterson?

7 MR. PETERSON: Yes. Thank you, your Honor. I
8 will try to keep my remarks brief.

9 The way I break it down is we have two things
10 going on here. One is narrow and specific and the other
11 is broad and more general and policy driven.

12 I would first like to focus on the narrow
13 because that is the easiest, and that is, you entered an
14 order, the parties agreed to the order, and the order
15 was, I believe, a fair order and it was a compromise and
16 you entered it because it was -- it implemented what I
17 believe to be the policy implications underlying the
18 statute, so what you ordered, your Honor, was that Mr.
19 O'Mara obtain the services of a physician licensed in
20 the State of Nevada, credentialed at Saint Mary's
21 Hospital, willing to order whatever medications or
22 procedures that licensed physician deems necessary and
23 appropriate for Aden, including preparation of a written
24 plan to be presented to you and a discharge plan to be
25 presented to you outlining details about the manner of

1 discharge and the manner of transportation, and the
2 manner for which that is paid.

3 They produced two witnesses today to satisfy
4 that obligation that you imposed on Mr. O'Mara and which
5 he agreed to accept, and one is Dr. Callister.

6 Dr. Callister made it very clear he is not
7 undertaking any responsibilities whatsoever for Aden
8 Hailu. He had absolutely no clue, no idea with respect
9 to any of the details, at least firsthand knowledge
10 because he wasn't involved in it, with respect to any of
11 the plans and details that you ordered Mr. O'Mara to
12 comply with in order to prevent a ruling from the Court
13 on the TRO, so Mr. Callister did not satisfy the
14 obligation that Mr. O'Mara willingly assumed in this
15 case.

16 The other witness, of course, is Dr. Manthei.
17 It seems to me that what Dr. Manthei, who is osteopath,
18 testified to, and you heard it yourself and maybe your
19 understanding is a little different from mine, but I
20 basically thought what he said was if St. Rose de Lima
21 is willing to accept this patient, and if I obtain the
22 services of a pulmonology group down there, neither of
23 which has happened, then he's willing to perform a
24 tracheotomy.

25 Incredibly he's willing to perform a

1 tracheotomy without, as you asked him yourself, without
2 having reviewed any of the medical records whatsoever
3 pertaining to this case, just an affidavit I presume
4 that Dr. Byrne sent him and he's willing to perform a
5 tracheotomy, but again, the fundamental point here is he
6 can't do that unless and until he finds and secures the
7 services of that pulmonary group he mentioned and the
8 hospital down there is willing to accept that person.
9 That is a critical thing because nothing can happen,
10 nothing can happen until such time as that occurs.

11 In other words, there has to be, as you
12 required Mr. O'Mara to prove that there is a destination
13 and a place that will take her. It is just pabulum for
14 Mr. O'Mara to state to you without the benefit of a
15 single scintilla of evidence that Medicaid is going to
16 pay for transportation and Medicaid will pay for the
17 hospitalization.

18 There's been no evidence or proof of that.
19 That does not happen until such time as the hospital,
20 who is willing to take the patient, has agreed to take
21 the patient. They don't agree to take the patient until
22 there's a doctor who is willing to admit the patient,
23 and there's no doctor willing to admit the patient until
24 there's a doctor willing to take care of the pain. None
25 of those things have happened, so none of the things

1 that you gave Mr. O'Mara three weeks, and the petitioner
2 in this case, three weeks to obtain has not happened,
3 and they are basically nowhere closer as far as I can
4 tell today than they were three weeks ago accept, again,
5 promises on, well, I think that maybe when a bed opens
6 up, maybe there will be an opportunity to be admitted
7 there, but again, there's no testimony from a licensed
8 physician that they're going to take care of the
9 patient, that they're going to discharge that patient or
10 care for that patient or that the hospital is going to
11 accept the patient that is clinically dead, and that
12 goes now to phase two of the argument.

13 And that is, your Honor, that absent a
14 finding -- I'd like to go back to the legal argument
15 where we started, and I think you did say we were going
16 to resume the hearing, so I'd like to go back to where
17 we started.

18 The plaintiff is here on a motion for temporary
19 restraining order and they have a burden of proof in
20 order to obtain that kind of relief from this Court.

21 They have to proof first that there's
22 irreparable harm, they have to prove that the balance of
23 hardships tilts in their favor, and three, they have to
24 prove at least that the order may not be implemented or
25 implement public policy, but at least it won't

1 contravene public policy.

2 What we have here is a complete inability, and
3 this requires your Honor to make the hard choice that
4 Mr. O'Mara was alluding to, inability to prove any
5 irreparable harm.

6 There cannot be as a matter of law irreparable
7 harm from disconnecting life support mechanical
8 equipment from a person who is dead. I have cited cases
9 to the Court establishing that proposition.

10 I think I've alluded to the Court that if you
11 look at the literature on this, we're not making history
12 here. We're basically repeating history here. This
13 goes on and has gone on for years in courtrooms
14 throughout the United States because some people view
15 this as life and death decisions when it's really only a
16 decision to confirm that a death has already occurred,
17 and that is why the Uniform Act was enacted and applied
18 throughout the United States, including in Nevada,
19 because of the extreme advancements in medical
20 technology that allows mechanical devices to be applied
21 so that the heart keeps beating and that the lungs keep
22 operating, notwithstanding the fact that a person -- and
23 you can do that indefinitely, like cryogenics, which is
24 different, of course, to a person that is dead, which is
25 why -- which is why the laws throughout -- in all the

1 states of the United States, including Nevada, says
2 you've got to narrowly focus on the issue here, and that
3 is, is the criteria satisfied.

4 That is the legal question and that is the
5 medical question that is presented to the Court and that
6 is really the fundamental crux of the issue here,
7 because if in fact Aden Hailu satisfies the definition
8 of death under the Nevada law, then none of the elements
9 of a temporary restraining order can be satisfied here
10 and the evidence presented to you in court today, your
11 Honor, satisfies that test unequivocally.

12 I say that because Dr. Heide, who testified
13 before you last time, went through all of the elements
14 of the requirements of the -- I forget what it's called,
15 the National Association of Neurologists, or AAN,
16 American Association of Neurologists. That does apply
17 here in the State of Nevada.

18 There are essentially three elements that are
19 required. This was testified to today by Dr. Floreani.
20 One, your Honor, is coma. There's only three. One is
21 coma. Coma is irreversible. Dr. Floreani testified
22 that she's in a coma, it's irreversible.

23 Dr. Callister likewise stated she's in a coma.
24 He said likely irreversible. We don't deal in theory
25 here in courtrooms, unfortunately. We deal in medical

1 certainties. Test one, unequivocally satisfied. A coma
2 irreversible.

3 The second test was the test of brain functions
4 or brainstem functions, and there are a number of tests
5 that the profession has agreed upon in order to
6 determine those.

7 I went over each one of those with Dr.
8 Callister. Dr. Heide went over them as well and there
9 are a series of those, the pupillary test. Basically
10 what they're testing for is whether there's any response
11 from the brain to any of the things that a living brain
12 would respond to.

13 I had a hard time getting Dr. Callister to
14 admit it, but you will recall I hope that at the very
15 end, I said name me one test, one test that was not
16 satisfied to satisfy -- that was not satisfied to meet
17 the definition of death under the Uniform Act, and his
18 testimony was, if I'm required to testify by checking
19 each of the boxes, each of the boxes is testified.

20 He might have a different opinion. He might
21 say there's a possibility, one in a million maybe that
22 she'll survive or come out of it. The father hopes for
23 a miracle here.

24 That is not the way it operates in this
25 courtroom. That is why we have the Uniform Act in order

1 to get around precisely those kinds of debates.

2 Again, the focus of the Court should be on the
3 principles of law outlined in the Uniform Act and the
4 case law underneath that act, and I submit to the Court
5 that if you apply the law, however difficult it might
6 be, however painful it might be, then that is the way it
7 is supposed to be, unfortunately, because that is the
8 outcome of determinations of this type in courtrooms,
9 and it's supposed to make things easier, not harder,
10 easier, which is exactly what Dr. Floreani was
11 testifying to.

12 He said my opinion doesn't matter, I'm telling
13 you that we utilize the tests. We need guidelines. The
14 medical profession needs them, the legal profession
15 needs them as well. Those guides unequivocally point to
16 one thing, and that is that Aden Hailu is clinically
17 dead.

18 If that is the case, there can be no
19 irreparable harm, there's no point in balancing
20 hardships, and I submit to you that the public policy
21 here is much maligned, much damaged if courtrooms in
22 Nevada are going to engage in debates among experts as
23 to facts regarding whether or not someone who meets all
24 the clinical definitions of death can somehow experience
25 a miracle and come out of it.

1 Those kinds of ideas, concepts, hopes, desires,
2 dreams, no place in this courtroom, so I exhort the
3 Court, as painful and as hard as it might be, to stick
4 to the straight and narrow, look to the law, apply the
5 law and come to the conclusion which I think is very
6 clear that they have not satisfied their burden of proof
7 for a temporary restraining order in which case the
8 motion should be denied and that Saint Mary's should be
9 permitted to disconnect the equipment from the body of
10 Aden Hailu. That's all I have, your Honor.

11 THE COURT: Anything final, Mr. O'Mara?

12 MR. O'MARA: I'll just comment on a couple
13 things, your Honor. Life and death is the question.
14 Despite what Mr. Peterson says, they have declared
15 death.

16 Do you see a death certificate here? Do you
17 see a death certificate here? No. Have you seen
18 medical records saying, well, we claim that she's dead?
19 Well, the doctors have said that, but there's other
20 doctors that said that's not the case, so what is it?

21 If she has a chance to live, that chance must
22 be given to her under the law and the law says that he,
23 the parent, has the right to determine if they withdraw
24 or give treatment.

25 He's made his choice. He's expressed it to the

1 Court. We think that we can get it done. It obviously
2 is going to take a little time because St. Rose is full
3 right now, but that doesn't make it impossible and it
4 doesn't make it difficult. It just makes it -- there's
5 going to take a few more days or weeks, but the point is
6 he indicated, Dr. Manthei, that it would be somewhere
7 between a week and a month before they would get a bed
8 and that would happen.

9 Now, in order to do that, you can't set a time
10 and a date for the air people to pick up the child until
11 we know that the bed is available down in Las Vegas, so
12 what we're doing is we're waiting so that we can do
13 those things and they're already arranged except for the
14 date and time and place type of thing.

15 Now, it's interesting because he cited a lot of
16 cases, but here's a case, California, Bovey vs. Superior
17 Court where the performance of one duty conflicts with
18 another. The choice of the patient or his family or
19 legal representative, if the patient is incompetent to
20 act in his own behalf should prevail. Life prolonging
21 medical treatment includes medication, artificially or
22 technologically supplied, respiration, nutrition and
23 hydration, so those are things that the law has
24 indicated.

25 Now, many times it doesn't happen where the

1 family says it's time for the person to go. That's not
2 his case. His case has got a 20-year-old with skin
3 that's still good after three months, still having
4 urine, still having bowel movements. Is that all
5 because she can respirate? No. It's because the lower
6 part of the brain is in fact sending signals to those
7 organs so that they can function.

8 Obviously if she didn't have respiratory or if
9 she didn't have the ventilator, it would all stop, but
10 that doesn't mean the brain stopped with it. The
11 ventilator there keeps the brain functioning so that the
12 signals go to the various organs that are still
13 functioning. Thus, she is still alive whether we like
14 it or not, and whether or not it satisfies the standards
15 of neurology because standards are just that, they're
16 cookie cutter places, and I have never seen a law that
17 says we do it all by cookie cutters because every
18 fact -- every case is different based on the facts.

19 I just don't see in 47 years that any single
20 case was always the same, that you just did the cookie
21 cutter. That's not the case here, it's not the
22 arguments that have been put forth. I believe that in
23 fact the requirements of the preliminary injunction are
24 in order.

25 There's a risk here, life or death. No

1 question. If they pull the ventilator, she's dead.
2 There is no coming back, there's no way to get back,
3 she's dead, and you've heard the testimony of at least
4 two doctors that say that she is functioning. Her brain
5 is functioning even at a lower level.

6 The second -- and I believe the law says that
7 there's -- it's respiratory and circulatory system,
8 okay. Both of those are working because if they weren't
9 working, you would have a problem because nothing else
10 goes, but you've also heard the testimony of him saying
11 that, well, why is it that when she came in and she had
12 bruises, they healed. They healed.

13 Isn't that what the doctors do, heal people? I
14 mean, are you saying that the ventilator heals the
15 wounds? It doesn't make sense. There's brain function
16 sending things to heal the body, so this is in fact a
17 question of life and death, and because of that, I
18 indicate to the Court that mea culpa, I did not give you
19 a written plan, my fault. Obviously I had a couple of
20 things happen, but as the Court knows from the
21 testimony, I didn't know about it until late myself.
22 Thank you, your Honor.

23 THE COURT: So thank you very much. My
24 decision will not be based on whether your proposal was
25 in writing or not in writing, and I have listened very

1 closely.

2 These two people have revealed to Mr. Gebreyes
3 that they have a child of your daughter's age. I have a
4 daughter who goes to UNR and she's 21. Is it Aden? And
5 so I think of what Aden -- what decision making she went
6 through that night when she first went to the clinic and
7 then went to the hospital, and she did what my daughter
8 would do because we've kind of raised them to take care
9 of themselves, and so when she wasn't feeling well,
10 maybe on your advice, maybe on her own, she went to the
11 clinic, and if my daughter did that I would have been so
12 relieved that she went to the clinic.

13 And then when they told her you better go to
14 the hospital, she did that, too, and so it's very clear
15 to me that your goals as a parent are very similar to my
16 goals as a parent. Get your child into school, get them
17 started on their independence.

18 She's -- my daughter goes to UNR. I live in
19 Washoe County, she's right next door, but you had so
20 much confidence in her independence and strength as a
21 person and knowledge of her intelligence, not that I
22 don't have those in my daughter, but you said go ahead
23 and go to UNR, we'll be a little bit further apart, but
24 I think it will be good for you and I trust that what
25 we've raised you to be is who you are, and so your

1 daughter is very much real to me and your feelings are
2 very much real to me in a personal way in addition to in
3 a judicial way, and Dr. Heide also talked about having a
4 daughter who was a little bit younger than yours, I
5 believe, who had brain damage and he tried to connect
6 with you in that regard, and Dr. Floreani also made that
7 connection, and maybe people feel a need to say those
8 things to you and maybe I would hope they would say
9 those things to me because there is no human emotion as
10 a parent that is more difficult than the loss or
11 potential loss of a child, and out of dignity and
12 respect, that just needs to be said.

13 No parent should bury a child and no parent
14 should face these decisions, and I'm just sorry you're
15 facing these decisions.

16 So I would like to find the case that is cookie
17 cutter in family court, but I don't think there's any
18 cookie cutter cases and this certainly wouldn't fit in a
19 cookie cutter case because I think this case starts much
20 more broadly in some components of it than a Uniform Act
21 or an ANA protocol, because why are we even here when
22 these issues are so intimate and private?

23 So I recognize from the highest level of our
24 non cookie cutter system that we're talking about a
25 privacy issue, we're talking about a family issue, and I

1 put that on the record because I acknowledge the
2 responsibilities of those constitutional privacy issues,
3 of those familial right issues, and they overlay in
4 every case, but particularly in this case because
5 they're in the middle of this courtroom, all of those
6 things, and Uniform Acts and protocol are in existence
7 for all the reasons that Mr. Peterson said they were, to
8 allow some objective criteria, to afford everyone, to
9 afford the medical community, the legal community and
10 those associated with it when their circumstances arise
11 some criteria to let us rely on and use, but I would not
12 hesitate, I would not hesitate to disregard the Uniform
13 Act or the American Neurological Association protocols
14 if there was a basis to do it that was sufficient to
15 negate or render those protocols or legal directives
16 inapplicable to this case.

17 Uniform Acts are helpful until they are no
18 longer relevant because the facts or the circumstances
19 bring it outside the realm of those acts.

20 So as Mr. Peterson said, there are kind of
21 different areas of this case. The issue is whether or
22 not to grant the restraining order, and the interested
23 party is arguing that it should not be granted because
24 the medical evidence from Dr. Heide, from Dr. Floreani,
25 from the protocols that were followed dictate in every

1 respect medical standards were met, the outcome and
2 criteria were satisfied in terms of the statute, the
3 protocol was followed, the outcome of the various three
4 step tests under the protocol all direct certification
5 of death, and I agree, but I don't in that agreement
6 disregard other issues and other evidence.

7 There were five thoughtful doctors who
8 participated in this hearing, Dr. Byrne, Dr. Callister,
9 Dr. Manthei, Dr. Heide, and Dr. Floreani, it's a
10 beautiful name, and I listened to each and every one of
11 those statements very, very closely for several things.
12 Are their statements negating the substantial evidence
13 that I've heard of a compelling and credible nature such
14 that that evidence is placed in question, overshadowed,
15 negated, even just placed in doubt.

16 None of the evidence, none, Dr. Byrne, Dr.
17 Callister, and Dr. Manthei, none of their opinions do
18 that, and it's not because I don't want those opinions
19 to do that. I listened to them the way I imagine you
20 listened to them, with the ear of a Judge and the ear of
21 a parent.

22 Dr. Callister, whose testimony was really
23 forthright and I appreciate it and it was helpful to the
24 Court, Dr. Callister referenced the outcome of
25 restorative capacity for Aden to be grim, to be remote,

1 to be a long shot.

2 He indicated that the likelihood of returning
3 any functionality upon the treatment suggested was not
4 likely. He indicated that there was not likely a direct
5 benefit of all of the proposed plans to result -- not
6 likely to result in a direct benefit that would change
7 the functionality of the child's condition.

8 Dr. Callister indicated that the risk of
9 transfer in and of itself was a risk for your child to
10 the extent of implementing this plan, and Dr. Callister
11 agreed that the protocols could not be disputed in terms
12 of their outcomes and the conclusions identified from
13 those outcomes.

14 Dr. Byrne's testimony was just simply
15 inconsistent with the standards of medical practice,
16 insufficiently supported, theoretical, and not
17 sufficient to allow the Court to re-direct, to even
18 approve the proposal as a non-experimental appropriate
19 therapeutic course of treatment for purposes of directly
20 or even potentially re-directing and reconstructing and
21 regaining functionality for your daughter, and Dr.
22 Manthei, who was very narrow in his testimony, so narrow
23 that the Court really could not rely too much on the
24 information provided.

25 He has concluded that he will conduct one of

1 the two necessary protocols that is theorized to be
2 appropriate for this experimental, or as Dr. Callister
3 suggested, it may be more appropriately called an
4 empirical trial for Aden.

5 Dr. Manthei said that he would conduct a
6 tracheotomy. He made that statement without reviewing
7 what this Court considers to be the most substantial
8 component of the medical information about your daughter
9 which is the medical information from Saint Mary's, from
10 Dr. Heide, from Dr. Floreani, from the results of the
11 various tests.

12 I have to say I was slightly taken back by the
13 level of his confidence in the appropriateness of that
14 course of surgery in light of not having recent medical
15 review of anything other than Dr. Byrne who limited his
16 testimony in the first place to a very significant
17 degree. Dr. Byrne's suggestions were limited to a very
18 significant degree in the first place.

19 Now, Mr. Peterson is right, the Court expected
20 more and hoped for more because hope is in everyone's
21 heart, right? None of us can survive without hope, but
22 at some point -- well, let me just say, this case didn't
23 start at the last hearing. You've already had a hearing
24 in front of Judge Steinheimer where there was an
25 agreement between the parties to extend time so that the

1 hope could be pursued, through identification of a
2 physician, through identification of a plan, and then
3 you came back to this Court because that wasn't
4 successful.

5 A neurologist from Stanford wasn't produced,
6 but that's all right because we said let's do it again.
7 Even though the Court had heard substantial evidence,
8 let's extend this a little bit more, but I don't really
9 care if you didn't cross your T's and dot your I's, I
10 don't really mind that this isn't a written proposal,
11 that the proposal is deficient in so many ways, but even
12 if it were a perfect proposal, even if, which you do not
13 have, someone is in Las Vegas who will perform the GI
14 surgery, and even if Dr. Manthei had reviewed all the
15 medical evidence, and even if the hospital had a
16 transfer placement for Aden, even if all those things
17 were in place, and even if we were to assume that
18 Medicaid would be the entity to pay, which we would all
19 hope it would, that plan of care is not compellingly
20 convincing to this Court as a best interest plan of care
21 for your child, and the reason is it's insufficiently
22 supported to a significant degree by the medical
23 evidence which actually overwhelmingly supports by clear
24 and convincing evidence an opposite course of
25 intervention.

1 No one disagrees with erring on the side of
2 life. I don't disagree with the concept of erring on
3 the side of life. We want all of our loved ones to
4 live, and those we've lost, we continue to mourn them
5 because their presence is so significant, and I go back
6 and think could we have done something different in my
7 loved one's lives to extend their lives, but we also do
8 something very significant in our lives.

9 We raise our children, we care for our
10 children, we teach our children. We hopefully never
11 bury our children, but sometimes their life is also
12 their death, and we parent our children through that as
13 nobly and with as much dignity as we parent them through
14 their lives, and I must say not only is the plan not
15 supported by evidence to a sufficient degree to consider
16 this anything other than experimental and not meeting
17 the criteria of experimental protocols that the Court
18 would approve under 159.0805. Those protocols are not
19 met.

20 I am struck by the conflict and the challenge
21 of honoring Aden as living while disregarding that part
22 of us who have to honor her if and when she dies, and
23 there's a dignity to that and there's a respect to that,
24 and this plan does not do that both objectively and
25 legally, but quite frankly, if we're talking about

1 policy and human dignity and privacy and familial
2 rights, we are disregarding the most important person's
3 right to exist and to pass with dignity and respect.

4 So today I don't find that there's a basis to
5 approve the alternative plan, and I find that
6 specifically it's not in her best interest, and going to
7 your point with respect to 439, Mr. O'Mara, or
8 449.262(1) to (2), I won't argue that issue, I'll say
9 two things.

10 Mr. Gebreyes is both Aden's father and Aden's
11 guardian, and the Court will look in both of those
12 circumstances to all of the certainly directives of an
13 individual and then to the individual's family, but keep
14 in mind that statute goes to withholding treatment.

15 It does not go to the right to force treatment
16 on a person who has qualified, medically and legally, to
17 no longer be alive, and I do not find either under the
18 best interest statute and provisions of 159 or under
19 your reference the right to make those decisions and
20 make those medical calls as you're suggesting and I
21 disagree 449.626 provides, you are not in a place to ask
22 this Court to force the continued treatment of Aden both
23 in your alternative plan or in your desire to refrain
24 from withholding the treatment.

25 I will conclude that the restraining order is

1 denied, that the medical evidence substantially
2 establishes by clear and convincing evidence that Aden
3 has met the criteria, both under the Uniform Act with
4 respect to declaration of death at NRS 451.007(1), sub
5 part B, and two, that those provisions are met, and that
6 the American Neurological Association protocols have
7 been thoroughly complied with such that Saint Mary's is
8 not restrained from terminating, withholding or
9 withdrawing life support system for Aden, but upon your
10 oral request, I will consider granting further
11 injunction pending your appeal to the Supreme Court on
12 your oral motion today.

13 MR. O'MARA: And I make that motion.

14 THE COURT: And how much time do you need?

15 MR. O'MARA: I think ten days is fine, your
16 Honor.

17 THE COURT: Ten days is granted. I need you to
18 prepare the order.

19 MR. PETERSON: Yes, your Honor.

20 THE COURT: Good luck.

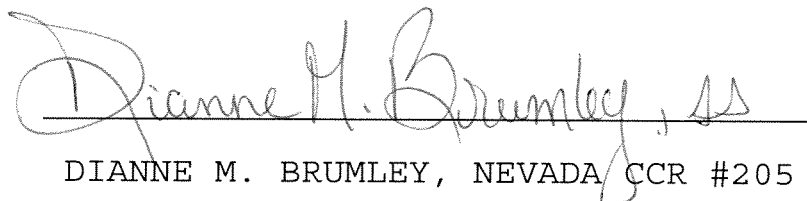
21 MR. O'MARA: Thank you, your Honor.
22
23
24
25

1 STATE OF NEVADA)
2 COUNTY OF WASHOE) ss.
3

4 I, DIANNE M. BRUMLEY, a Certified Court Reporter
5 and Notary Public for the County of Washoe, State of
6 Nevada, do hereby certify that on _____, the
7 _____ day of _____, 2015, I transcribed the
8 above proceedings from a CD;

9 That the foregoing transcript is a true and
10 correct transcript of the CD taken by me in the
11 above-captioned matter to the best of my knowledge,
12 skill and ability.

13 I further certify that I am not an attorney or
14 counsel for any of the parties, nor a relative or
15 employee of any attorney or counsel connected with the
16 action, nor financially interested in the action.

17 
18 _____
19 DIANNE M. BRUMLEY, NEVADA CCR #205

20 CALIFORNIA CSR #6796

21 BONANZA REPORTING - RENO
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23
24
25