IN THE SECOND JUDICIAL DISTRICT COURT OF THE

STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

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IN THE MATTER OF THE GUARDIANSHIP OVER THE PERSON AND ESTATE OF ADEN HAILU,

An Adult Ward.

FANUEL GEBREYES,

Petitioner,

vs.

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

Respondent.

Case No. CR15-00125
Dept. No. 12

JAVS RECORDING

TRANSCRIPT OF PROCEEDINGS

Thursday, July 2, 2015

Reno, Nevada

145

REPORTED BY: SUSAN E. BELINGHERI, CCR #655

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1 RENO, NEVADA; THURSDAY, JULY 2, 2015
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4 THE DEPUTY: Good afternoon, Your Honor.
5 This is case number GR 15-00125, the Hailu matter.
6 THE COURT: Okay. Good afternoon.
7 MR. PETERSON: Good afternoon.
8 MS. PRUPAS: Good afternoon, Your Honor.
9 THE COURT: My name is Frances Doherty. I'm
10 the judge in your case. Do you mind saying your names
11 for the record? We'll start with this table.
12 MR. O'MARA: My name is Bill O'Mara, and the
13 plaintiff -- or the guardian in this case is Mr. Fanuel.
14 THE COURT: Thank you.
15 MR. PETERSON: Your Honor, my name is Bill
16 Peterson. I'm from the law firm of Snell & Wilmer.
17 We're here on behalf of the respondent in this case,
18 Prime Healthcare, Inc., doing business as Saint Mary's
19 Regional Hospital. I have some clients here that I'd
20 like to introduce. Would this be the appropriate time?
21 THE COURT: Sure. Go ahead.
22 MR. PETERSON: We have with us today sitting
23 in the far, my left, is Helen Lidholm. Helen is the
24 chief executive officer for Saint Mary's Hospital right
25 here in Reno. Next to her is Tammy Evans. Tammy Evans

1 is the -- maybe you know each other. I don't know.
2 THE COURT: I don't know. It's a familiar
3 name. Do we know each other?
4 MS. EVANS: I don't believe so, no.
5 THE COURT: I don't either. I knew a police
6 officer by the name of Tammy Evans. Was that you?
7 MS. EVANS: No.
8 THE COURT: Okay.
9 MR. PETERSON: She's the, the chief nursing
10 officer for -- I'm sorry, the director of medical
11 services for Saint Mary's Hospital. And next to her is
12 Katie Grimm, who is the chief nursing officer for Saint
13 Mary's --
14 MS. LIDHOLM: She stepped out.
15 MR. PETERSON: What?
16 MS. LIDHOLM: She had to, Katie stepped out.
17 MR. PETERSON: Oh, she had to step out? I'm
18 sorry. She stepped out momentarily.
19 THE COURT: All right.
20 MR. PETERSON: On my far right here is
21 Dr. Aaron Heide. Dr. Heide will be a witness. He's a
22 neurologist for Saint Mary's Hospital.
23 THE COURT: All right. Thank you very much.
24 MR. O'MARA: Your Honor, in that regard, the
25 guardian is present, but also is Dr. Byrne, who is

1 seated right behind me -- us. Dr. Byrne.
2 THE COURT: Oh, okay. So --
3 MR. O'MARA: And as a matter of record?
4 THE COURT: Uh-huh.
5 MR. O'MARA: I made a mistake. In my moving
6 papers I said that the ventilator would be removed on
7 July 3rd, and that was incorrect. So I'd like to ask
8 the Court by interlineation to change all those
9 references to July 3rd to July 2nd at 5:00 o'clock.
10 THE COURT: All right. Thank you very much.
11 Mr. O'Mara, you may proceed. Is there a request to
12 exclude the persons who will be testifying, or are you
13 stipulating to them remaining in the courtroom, counsel?
14 MR. O'MARA: I'd just as soon have them
15 present.
16 MR. PETERSON: Yeah. Thank you, Your Honor.
17 THE COURT: Okay. All right. Mr. O'Mara,
18 would you like to make an opening statement with respect
19 to your moving papers?
20 MR. O'MARA: Yes, Your Honor. I'll do it
21 very slowly. I believe that you've read all the papers.
22 I think one of the things that is important, especially
23 in reading -- well, let me start this way.
24 THE COURT: Let me interrupt before you
25 start. Would you take the microphone and put it closer

1 to you, each of you, so that I can hear you better and
2 we record the proceeding completely. Thank you very
3 much.
4 MR. O'MARA: Your Honor, may I sit down,
5 then, so I'm --
6 THE COURT: Yes.
7 MR. O'MARA: -- closer to it?
8 THE COURT: I would be happy to have you sit
9 down.
10 MR. O'MARA: Another change in the law.
11 Your Honor, this has been before the Court
12 since April 17th, which was the day that this Court
13 ordered Mr. Fanuel to be the temporary guardian, and
14 then subsequently became the permanent guardian of the
15 child. I shouldn't say child, but the adult ward.
16 After that, and during that period of time,
17 there were numerous communications between the ward and
18 the father of Aden. Aden was not able to express her
19 own opinion as to what she wanted, and as the Court is
20 aware, is the Nevada Uniform Act of rights of terminally
21 ill people. There is three provisions in that. The
22 person can say it themselves, or the others, but the
23 primary one is that the family has a say, and Mr. Fanuel
24 obviously had a say, and they just ignored him.
25 First, he was requested to, that he

1 authorize, or consent, to an apnea test, which he
2 denied. He told them he didn't want that done, because
3 it would cause further damage to the child. To the, the
4 ward. Excuse me. I explained the procedure that was
5 taken care of that, according to Dr. Byrne, was from the
6 medical records. They stopped the ventilator for ten
7 minutes and then a test is given that apparently
8 something doesn't work right and therefore he's, the
9 child's dead. During that entire period, however, there
10 is some activity as far as the thyroid is concerned. So
11 it's not totally dead.
12 We have, interestingly, there's some
13 circulation, because we know that the abrasions in the
14 body were healed. Second, we know that in order for a
15 person to be dead, according to the statute, all
16 functions of the person's entire brain, entire brain,
17 has to stop. Now, it also says including his or her
18 brainstem. Well, that's an inclusion. That's not
19 excluding the, all the brain function. It is saying
20 that they have to include that in their determination.
21 They can't use that solely as the requirement for
22 declaring that the child, or the person, is brain dead.
23 And my opinion, at least I haven't talked to
24 any of their doctors, but from what I've seen and heard,
25 the hospital wishes only to use Section B, and then

1 interpret it to mean that the brainstem is only, is the
2 only function to determine death, and the wording is all
3 functions of the entire brain, not just his or her
4 brainstem.
5 I will note that in the opposition papers
6 there seems to be a lot of criticism of Mr. -- Dr.
7 Byrne and his opinion, almost to the effect that he's a
8 kook, because he believes in the right to life.
9 Here we are asking for the ventilator to
10 continue, to have thyroid hormone treatment. Why is
11 that important? Well, it's interesting, because if they
12 were going to take the body parts, or body organs out,
13 they would give her hormone treatment to, to enrich
14 those organs and allow them to function. Here we have
15 minor brain function, because the thyroid is working,
16 very little, but it's working, and so she's alive. And
17 despite the fact that you may have a doctor who says
18 that medically she's dead, I don't think that's true.
19 Now, has there been any changes? This law
20 that they're talking about, which I interpret to mean
21 that the entire brain has to be not working, was made in
22 1985. I wonder if there's been any medical changes in,
23 in the 40 years that have passed since -- or 35 years.
24 I know I've had a heart attack, I've had four stents put
25 in. None of that was possible many, many years ago. So

1 we know that there's a lot of things that have happened
2 in, in the other period of time.
3 But we have actual cases where they've been
4 called brain dead and, given the proper treatment, they
5 come back to life. They're cited in the documentation.
6 You have two doctors that have given an
7 opinion in this case about the thyroid hormone
8 treatment, and if that's not done, obviously, she'll
9 stay on a ventilator. But if that is done, then the
10 normal organs will start to recover and heal.
11 So we're here for that purpose. Mr. Fanuel
12 is the ward, he has the right under the act to make
13 those decisions, despite the fact that in the opposition
14 papers they indicate that only the doctors have the
15 right to determine the care of the patient.
16 THE COURT: Which rights do you think the
17 guardian has? Which rights to decisions do you think
18 the guardian has?
19 MR. O'MARA: The guardian has the right to
20 make the decision of the, of the person, of the ward.
21 And that's the third portion of the act.
22 THE COURT: Of which act, Mr. O'Mara?
23 MR. O'MARA: Pardon me?
24 THE COURT: Of which act are you referring?
25 MR. O'MARA: Oh, I'm sorry.

1 THE COURT: That's okay.
2 MR. O'MARA: It's called the Nevada Uniform
3 Act of Rights of the Terminally Ill.
4 THE COURT: Okay.
5 MR. O'MARA: And it's codified in NRS
6 449.535 through 449.690.
7 THE COURT: All right. Mr. Peterson --
8 MR. O'MARA: And then just --
9 THE COURT: -- do you want to make an
10 opening statement, or do we just want to go ahead and
11 proceed to let Mr. O'Mara --
12 MR. PETERSON: You know, Your Honor, if you
13 don't mind, I would like to make an opening statement.
14 THE COURT: All right. And who is that to
15 your left?
16 MR. PETERSON: Oh, I'm sorry. This is Jacey
17 Prupas. She was out when I made the introductions.
18 THE COURT: Okay. Could you --
19 MR. PETERSON: Jacey is from Snell & Wilmer.
20 THE COURT: -- spell your last name, please?
21 MS. PRUPAS: Prupas, P-r-u-p-a-s.
22 THE COURT: Thank you. All right. Go right
23 ahead had, Mr. Peterson.
24 MR. PETERSON: All right. First of all,
25 Your Honor, I think some of the chronology that was laid

1 out by Mr. O'Mara is not accurate, although it could be
2 that I'm mistaken, because I got into the case, of
3 course, relatively late. Earlier than Mr. O'Mara did,
4 but still somewhat late. But I don't think this case
5 started, really, until June. I believe that's when the
6 guardianship was appointed in this Court.
7 THE COURT: It was a little earlier.
8 MR. PETERSON: Was it a little bit earlier?
9 THE COURT: Yeah.
10 MR. PETERSON: Okay. That's the only paper
11 that I have.
12 But anyway, to put it all in perspective,
13 really, the case starts in April of this year, April 1st
14 of this year, when, of course, Aden Hailu came in for,
15 you know, some issues that could not be medically
16 determined without exploratory surgery, and of course we
17 all know what happened as a result of that. But the
18 incident that resulted in what we claim to be her death,
19 actually occurred on April 1st. That's over, that's
20 over 90 days ago. Over three months.
21 Now, we, on April the 14th of that year, of
22 that month, rather, April 14th, two weeks later, the
23 hospital conducted a procedure and examination and
24 determined that there were no signs of life in, in
25 Hayden -- in Aden -- excuse me -- Aden Hailu.

1 On the 16th, two days later, the hospital
2 performed various tests, and these are tests that are
3 recognized and standard, standard medical practice,
4 which is the critical terminology under the, under the
5 act that we're dealing with today, and the tests that
6 were performed determined at that time, again, that's
7 April 16th, that in fact the, all of the indications
8 were that she was dead. All signs were consistent with
9 brain death at that time. That's April the 16th.
10 Then we, then we fast forward now, Your
11 Honor, to --
12 THE COURT: Could you stop clicking your
13 pen, Mr. Peterson? It gets kind of amplified.
14 MR. PETERSON: Oh. Okay.
15 THE COURT: Thank you.
16 MR. PETERSON: I'm sorry, Your Honor.
17 Then we fast forward to May the 28th. And
18 then on May the 28th is when the apnea test was
19 conducted. And whether or not the hospital had consent,
20 or whether it was performed over the objection of the
21 guardian, which I don't think was appointed at that
22 time, although I could be wrong, but regardless whether
23 it was done with or without consent is not relevant to
24 the issue, determination to be made by this Court.
25 It was conducted, and the apnea test did --

1 and by the way, that's the test where they disconnect
2 her from the life support for a period of ten minutes,
3 and then they, and then they make a determination as to
4 whether or not she draws a breath or has any other
5 indications of life, and after the ten minutes they
6 reconnect the, the apparatus.
7 That is a critical, that is a, that is a
8 gold standard test that is conducted, recognized by the
9 American Academy of Neurologists, which is standard
10 medical practice, accepted medical practice in the state
11 of Nevada, consistent with brain deaths. A
12 determination was also made at that time on May the
13 28th.
14 Then we, then we fast forward to the next
15 week, and that's when the lawyers get involved, and
16 that's when Cal Dunlap sent a letter to the hospital
17 stating do not disconnect any of the life support
18 systems without giving us ten days' notice in advance.
19 Of course that's not acceptable to the hospital --
20 THE COURT: What was that date?
21 MR. PETERSON: Say it again, Your Honor.
22 THE COURT: What was that date?
23 MR. PETERSON: That would have been June the
24 2nd, Your Honor.
25 THE COURT: Just so you know, Mr. Peterson,

1 the first letters of guardianship in this case were
2 issued on a temporary basis on April 17th.
3 MR. PETERSON: Okay. I did not have that
4 record.
5 THE COURT: And the permanent letters
6 that -- that was extended on May 8th.
7 MR. PETERSON: Don't have that one either.
8 I have one in my file here that's dated June 2nd.
9 THE COURT: Did you not look at the file in
10 the court?
11 MR. PETERSON: As I said, we were not part
12 of the case at that point in time. We wouldn't be
13 getting these notices.
14 THE COURT: No, I know. But, I mean --
15 MR. PETERSON: I think we just drew them off
16 the docket.
17 THE COURT: Okay.
18 MR. PETERSON: We --
19 THE COURT: It's not a sealed file, so --
20 but those are the dates.
21 MR. PETERSON: Yeah. We could easily have
22 made a mistake. I don't think it's relevant, anyway, to
23 the determination to be made by the Court.
24 THE COURT: Okay.
25 MR. PETERSON: In any event, June 2nd is

1 when Cal Dunlap gets involved. He writes a letter to
2 the hospital. He says, "Please do not disconnect any of
3 these until, without giving us ten days' notice because,
4 you know, we need to make arrangements for moving her,
5 and we would also like to have a neurologist from
6 Stanford University come and do an examination."
7 That's when I get involved. I've been
8 representing the hospital for some time. I respond to
9 Mr. Dunlap's letter, and I respond to that letter on, on
10 June the 12th. And I tell Mr. Dunlap, "Look, the
11 hospital cannot give you ten days' notice before
12 terminating any life support systems." I pointed out to
13 him that under the Determination of Death Act applicable
14 in the state of Nevada, and everywhere else in the
15 United States, Aden Hailu was dead and that we were not
16 going to, the hospital could not, ethically, morally, or
17 legally, continue life support system support to a, to a
18 dead body. But --
19 THE COURT: Would you please try to be a
20 little bit more sensitive to the conversation --
21 MR. PETERSON: I'm sorry.
22 THE COURT: -- in that regard, Mr. Peterson?
23 MR. PETERSON: Yes.
24 But regardless, we gave him, at that point
25 in time we said, "We are going to continue it for a

1 period of, of two weeks, give you some more time,
2 basically, to June 19th, I believe, in order to make
3 whatever arrangements you need to make to arrange for
4 this neurologist that you indicated you were going to
5 get to come in and do the examination. But at that
6 point in time, then we are going to go forward with
7 disconnecting the life support systems."
8 Mr. Dunlap could not accept that, of course,
9 and he wrote back and asked for additional time, and I
10 told him that we could not give him additional time. He
11 still had time. He still had at least ten days to make
12 the arrangements. But at that time, as you know, I got
13 concerned that the time was going to run out on him.
14 And so then I, I wrote another letter, both to him and
15 to the attorney for the guardian, Earl Ryan, who I
16 understand withdraw --
17 THE COURT: Ryan Earl.
18 MR. PETERSON: Yeah, withdrawn. Ryan Earl
19 had withdrawn, telling him, "Look, we're still planning
20 on going forward. However, you know, I understand the
21 extreme measures that you're all under. Therefore, you
22 don't need to go through any, any elaborate court
23 processes to get an order shortening time for me."
24 And I called over to this court to determine
25 what the availability was for this court to hear

1 something on an emergency motion, if they decided that
2 they were going to need that. And I told them I called
3 over here, there were some days available. I told them
4 the time available for that. And, you know, "If you're
5 up against the wall, again, you don't need to go through
6 a process. I'll show up."
7 And then of course that's exactly what
8 happened. You all, you know the story, I'm sure, as how
9 it ended up in Judge Steinheimer's court rather than,
10 rather than this particular court. The outcome of what
11 happened in Judge Steinheimer's court, based on the
12 minutes that I'm sure you've read, and they're Exhibit 2
13 to his papers, was basically we, we agreed to allow them
14 another week, which would be three, an additional week
15 for a total of three weeks, up to today, basically, in
16 order to make arrangements for a, a neurologist to come
17 and do an examination, to corroborate, if they wanted
18 to, what our neurologist and physicians have already
19 determined under the act.
20 And then of course what happened is, which
21 may not be part of the court record, but it will be part
22 of the testimony, is that I personally made arrangements
23 for Dr. Peacock, who is a well-known neurologist here in
24 town, works, and then he teaches at the University of
25 Nevada, to perform such an examination for the family.

1 He's not employed by the hospital. He agreed to do so.
2 And -- but Dr. Peacock, for whatever reason,
3 after having examined the records, determined that, that
4 Aden Hailu had in fact, was deceased under, as defined
5 by the statute, and there was nothing that he could do,
6 and so informed Mr. Dunlap.
7 THE COURT: Are you, are you introducing
8 evidence to that effect --
9 MR. PETERSON: Yes.
10 THE COURT: -- or is this narrative?
11 MR. PETERSON: Yeah.
12 THE COURT: Okay.
13 MR. PETERSON: And the other thing, Your
14 Honor, that occurred during that period of time, and I
15 also have this record to show you, is that the family
16 retained Myron Gomez -- (inaudible) Gomez to perform the
17 examination that was called for by the Court, Judge
18 Steinheimer. And, and --
19 THE COURT: Well, let's just stop, just stop
20 you there. It's my understanding that there was an ex
21 parte communication sent to this chambers that was not
22 in the form of pleadings that was returned to some
23 attorney by mail as ex parte. There was a request for a
24 hearing prior to initiating an action in D-15, and the
25 request for hearing was not accommodated because there

1 were no pleadings filed in Department 12. Was that your
2 understanding?
3 MR. PETERSON: My understanding of that,
4 Your Honor, is Mr. Dunlap informed Judge Steinheimer --
5 this is in open court in the record --
6 THE COURT: But they came, you came -- Mr.
7 Dunlap came here first.
8 MR. PETERSON: Yes.
9 THE COURT: This Court required some sort of
10 pleadings, that attorneys just could not show up in
11 court and make an argument cold in court. The Court
12 directed a filing of a pleading. No pleading was filed
13 in this department. Instead, a new action was filed in
14 Department 15, based on a temporary motion. That's my
15 understanding. And then you went to Judge Steinheimer
16 on that motion. Is that right?
17 MR. PETERSON: Well, it wasn't me.
18 THE COURT: No, but it was filed by Mr.
19 Dunlap --
20 MR. PETERSON: Yes.
21 THE COURT: -- in 15. And then that's how
22 you ended up in 15 instead of the guardianship case. Is
23 that your understanding?
24 MR. PETERSON: Except is Judge Steinheimer
25 15? I thought she was --

1 MS. PRUPAS: No. It was a (inaudible).
2 THE COURT: No. Steinheimer sat in for
3 Judge Hardy, because Judge Hardy was unavailable, is my
4 understanding.
5 MR. PETERSON: I see. That part, my -- I
6 might have --
7 THE COURT: And that case has subsequently
8 been dismissed by agreement of the parties. Is that
9 correct?
10 MS. PRUPAS: Yes. According to the minutes.
11 THE COURT: Uh-huh.
12 MR. O'MARA: That's what the minutes say,
13 yes.
14 THE COURT: That's what the minutes reflect.
15 Okay. All right.
16 MR. PETERSON: That's kind of where we are.
17 MR. O'MARA: And I know nothing about that.
18 I wasn't even around.
19 THE COURT: Well, since it was kind of
20 referred to, the Court just thought it would share that
21 part of the history of the case.
22 MR. PETERSON: It got, it got to Judge
23 Steinheimer, I believe, because she was available --
24 THE COURT: Yes.
25 MR. PETERSON: -- according to --

1 THE COURT: Yes.
2 MR. PETERSON: -- according to Mr. Dunlap,
3 who made those calls. I told Mr. Dunlap I would go to
4 any court, any court --
5 THE COURT: Sure.
6 MR. PETERSON: -- he wanted. It made no
7 difference to Prime -- or to Saint Mary's. None at all.
8 So that's how we, that's how we, that's how
9 we ended up there. And of course the minute order, and
10 I think it reflects my recollection, is what the judge
11 said was, she gave him a, basically it was another two
12 weeks to get the, you know, arrange for the neurologist.
13 Which, again, I've already indicated to you that was Dr.
14 Peacock.
15 And then I was up at Dr. Gomez, and
16 Dr. Gomez was retained by, was retained by the family.
17 Excuse me, Your Honor. Dr. Gomez, then, I believe, at
18 some point was discharged by the family. But either
19 before or during that process, somehow, sometime, we
20 have the record, Dr. Gomez did perform an examination.
21 Not, not for Saint Mary's, but he performed it for the
22 petitioner.
23 THE COURT: Okay. Please don't give me the
24 results of that unless the results are going to be
25 introduced.

1 MR. PETERSON: They will be. And Dr.,
2 Dr. Gomez actually performed an apnea test, the same
3 apnea test that I described previously where you
4 disconnect for ten minutes and determine. Dr. Gomez's
5 record is here, and I will produce it, determined that,
6 that Aden Hailu met the clinical criteria, neurological
7 criteria established under accepted medical practice
8 here as having suffered brain death at that point in
9 time.
10 And then, and then Mr. Dunlap more or less
11 disappeared from the scene, indicating that he wasn't
12 sure whether they were going to be able to arrange for
13 the neurologist that they had contemplated getting in
14 Judge Steinheimer's court. And of course the next thing
15 that happened was this motion to come here (inaudible).
16 The point of that long, exhaustive
17 narrative, Your Honor, basically is to point out to you
18 there's a lot of stuff that went on before --
19 THE COURT: Uh-huh.
20 MR. PETERSON: -- today, and Aden Hailu has
21 been at Saint Mary's Hospital now for a period of
22 90 days. She has been examined, medically examined, at
23 least the records have been examined, by a neurologist,
24 and we determined that she satisfied the criteria of
25 brain death under the statute.

1 Another doctor not employed by Saint Mary's,
2 (inaudible) examination, an actual examination, came to
3 the same conclusion. And of course we're going to
4 present the testimony of Dr. Heide, who is here in
5 court, who also has made that determination.
6 Your Honor, I know you have read the papers.
7 The only point that I really hope to impress upon you in
8 the, in the papers is this, and that is: We are not
9 reinventing the wheel here, you can imagine. The
10 Uniform Determination of Death Act was enacted in Nevada
11 in 1980. It's been around in almost all the states
12 during that period of time. Proceedings like this go on
13 quite frequently in many, many courts.
14 And one of the reasons for the enactment of
15 that uniform act was to prevent precisely the
16 circumstance that we have presented, what they're
17 attempting to present here in this court today, and that
18 is to have a legal adjudication, a factual adversarial
19 process, in order to come to a determination as to
20 whether or not the criteria set forth for determination
21 of death under the uniform act has been, has been
22 satisfied.
23 I tried to impress upon the Court in my
24 papers that courtrooms are not equipped, judges are not
25 equipped, lawyers are not equipped, jurors are not --

1 MR. O'MARA: Your Honor, this is really
2 final argument.
3 THE COURT: Can you just wrap it up, Mr.
4 Peterson?
5 MR. PETERSON: Yeah.
6 THE COURT: I have read all of your
7 documents.
8 MR. PETERSON: Yeah. Not equipped, you
9 know, to, to conduct a battle of competing experts come
10 to a conclusion as to who's right and who's wrong. It
11 is overwhelmingly the law in jurisdictions that have
12 adopted the uniform act that the role of the Court is
13 very limited, and that is to make a determination, is to
14 only look at review to see whether or not the hospital,
15 which has the right to make these determinations, has
16 properly employed the, the criteria laid out in the
17 statutes, which is respiratory or cessation of
18 regulatory or circulatory functions, or cessation of
19 whole brain activity, as determined -- this is the
20 critical part for me, Your Honor -- as determined by
21 accepted medical standards.
22 And there are accepted medical standards in
23 Nevada. They are applied by all doctors in Nevada. We
24 don't have them laid out in the statutes. Some states
25 do. What we do is we adopt the, the standards that have

1 been set forth by the American Academy of Neurologists,
2 and they are, and they are several, and they are
3 discrete, and they are definitive, said the role of the
4 Court is to determine only whether that process was
5 properly performed and conducted, and, and, and
6 basically that's it.
7 It is not basically to determine whether the
8 hypothalamus is functioning, or anything of that nature,
9 because that is not the test. That is not the legal
10 test. The legal test is under whether, under medically
11 accepted standards determination of death has been made
12 based on a criteria laid out by those standards, which
13 is the American Academy.
14 THE COURT: All right.
15 MR. PETERSON: And that is the proof that we
16 intend to put on for you today.
17 THE COURT: All right. Thank you.
18 MR. PETERSON: That should be the end of the
19 (inaudible).
20 THE COURT: All right. Mr. O'Mara, would
21 you like to proceed with your motion?
22 MR. O'MARA: Yes, Your Honor. Thank you.
23 I'd call Mr. Fanuel to the stand.
24 THE COURT: All right. Mr. Gebreyes?
25 MR. O'MARA: Yeah. Raise your right hand

1 and then --

2 THE COURT: Would you mind coming right up

3 here?

4

5 FANUEL GEBREYES,

6 having been duly sworn,

7 was examined and testified as follows:

8

9 THE COURT: Have a seat. Sir, this is your

10 microphone, so please kind of sit closely to that.

11 THE WITNESS: Yes, ma'am.

12 THE COURT: There's also a jug of water and

13 some cups there for you.

14 THE WITNESS: Okay. Thank you.

15 THE COURT: Mr. O'Mara will start

16 questioning you, and Mr. Peterson will question you as

17 well. I may question you.

18 THE WITNESS: Yes.

19 THE COURT: And then we'll wrap it up for

20 you, I hope.

21 THE WITNESS: Thank you.

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

23 MR. O'MARA: Thank you, Your Honor. Let me

24 get to the --

25 THE COURT: Can you just, for my benefit,

1 state and pronounce your name and spell your last name.
2 THE WITNESS: Yes, ma'am. My name is, my
3 first name is Fanuel, and my last name is Gebreyes. And
4 I'll spell it for you. G-e-b -- B, as in boy --
5 r-e-y-e-s. And again, it's Gebreyes.
6 THE COURT: Thank you.
7 THE WITNESS: Fanuel, my first name. Thank
8 you.
9
10 DIRECT EXAMINATION
11 BY MR. O'MARA:
12 Q. Mr. -- okay. Please take a few moments and tell
13 us, when did you first find out about your daughter?
14 A. I find out about my daughter -- excuse me.
15 THE COURT: Are there tissues there for you?
16 THE WITNESS: Yes.
17 THE COURT: Okay.
18 THE WITNESS: Excuse me. Was around
19 10:00 p.m. at 1st of April. That --
20 BY MR. O'MARA:
21 Q. 1st of what?
22 A. April 1st.
23 Q. Okay. Where --
24 A. 10:00 p.m.
25 Q. -- were you?

1 A. I was in Las Vegas. My home.
2 Q. At home --
3 A. Yes.
4 Q. -- in Las Vegas?
5 A. Yes.
6 Q. And what did you do?
7 A. Well, I, I received a call from my niece that my
8 daughter's very ill, and she's at Saint Mary's. And I
9 try to find out what happened to her. My niece couldn't
10 tell me. She didn't know very well what happened. So I
11 made, I made a call to Saint Mary's, numerous calls to
12 numerous, you know, part of the hospital, but nobody
13 want to tell me anything.
14 So, you know, I waited until the next morning.
15 You know, you can't fly easy from, you can't find, I
16 couldn't find a flight for, you know, so I have to wait
17 for next morning. And I, I drove on the 2nd of April to
18 Reno.
19 Q. So you were here and saw your daughter on
20 April 2nd.
21 A. Yes, sir.
22 Q. Okay. Did you have a conversation with Dr. Chu,
23 the treating physician?
24 A. No, I have not. Because we, the day we arrived
25 here we did look for, you know, the first person, you

1 know, we were looking for her was Dr. Chu because, you
2 know, she's a responsible party. You know, she's a
3 surgeon. Nobody wants to tell us where she is, and we
4 couldn't find her.
5 Q. Did you eventually get in touch with her?
6 A. Yes, we did. That was after five days, if I, if
7 I recall correctly.
8 Q. What did you ask her to do?
9 A. Well, I -- excuse me. The first thing I, I said
10 was -- I heard, you know, she had an abdominal pain and
11 a fever when she walked into the hospital. She even had
12 some picture taken an hour before the surgery, you know.
13 And I say, "What happened to my child? You know? Would
14 you mind to tell me." And she said, "To tell you the
15 truth, I, I cannot tell you much." You know, she
16 couldn't tell me.
17 I mean, she did say something, which for me
18 doesn't give sense. I mean, it's a lot of medical
19 things that she said. But clearly I remember that --
20 well, I have to say, until this day nobody can tell me
21 what happened to her, of course. She said, "To tell you
22 the truth, I don't know what happened to Aden." And --
23 Q. Did you --
24 A. -- that was it.
25 Q. Before you came up or after that period of time

1 while you were up here, did you contact any doctors in
2 Las Vegas?
3 A. In Las Vegas?
4 Q. Yes. Did you receive any information on what to
5 do with regard to your daughter? What type of medical
6 care you wanted her to receive?
7 A. Well, you know, she was -- I didn't contact any
8 doctors, but what I did was I contact some facilities to
9 transfer her. I, I did that.
10 Q. And what did they tell you that they would do
11 with regard to transferring her?
12 A. What they said was the first thing they need for
13 transfer is a tracheostomy, which I'm very familiar with
14 in the past, and a gastrostomy, which is a, for a
15 feeding, the feeding tube. That's the number one thing
16 they need for Aden to be transferred.
17 Q. Did you subsequently talk to Dr. Chu and ask her
18 to do a tracheostomy and --
19 A. Yes, I did. I, I did talk to Dr. Chu. Actually,
20 I don't know if I did say the name correctly.
21 Mr. Floreani -- Dr. Floreani, it's -- I may be wrong on
22 his name, on his last name -- he's a pulmonologist in
23 Saint Mary's. He, he suggested that too, himself. You
24 know, every doctor knows that she need it.
25 And I requested that procedure to be done for

1 Aden so that she will be able to transfer. And Dr. Chu,
2 she was sitting right next to me, and she said, "Do you
3 have anybody in mind who can, you know, from outside who
4 can come in and do that procedure?" I said, "No, I
5 don't have anybody in mind, but I would like you to do
6 it." And she said, "Are you sure?" I said, "Yes, I'm
7 sure. I want you to do that for me, please." She said,
8 "Okay," and we shake hands and she left.
9 And the next thing I know, she came back and --
10 Q. Was that the same day or the following day?
11 A. Well, the same day she, I remember that she,
12 while I was in the room with my, with Aden, she came and
13 she checked her, you know, her neck and everything. And
14 she mentioned that she is, you know, she's checking her
15 for that, for that procedure. I said okay. You know,
16 we were happy. I thought it was going to be done.
17 And I believe the next day she came back and she
18 said she's not going to do it, and this case is not only
19 her decision, this thing is handled by lawyers and
20 administrators as well. So she said, "I'm sorry, and we
21 cannot do it. I cannot do it."
22 Q. Prior to that time, did they ask you if they
23 could do an apnea test?
24 A. Yes, they did. They did. I refused. I said no
25 apnea test. Multiple times, of course. And on the 2nd

1 of June when they say they going to take her off life
2 support, I asked, you know -- you know, what they said
3 was, in addition, she is, she been tested for apnea
4 test. And I, I was, I was very, you know, (inaudible),
5 you know, on that statement. Because I said, "Why? Why
6 would you do that? Because I strictly said no to apnea
7 test."
8 And the doctor was sitting in front of me was
9 saying he did it a week ago and the hospital got every
10 right to do that. And I hadn't been told about the
11 apnea test, which was performed a week ago. I didn't
12 know about it. I just found out on the 2nd of June.
13 Q. Okay. Is it still your opinion that you want to
14 move her out of Saint Mary's?
15 A. Yes. Absolutely.
16 Q. To your best knowledge, what do they have to do
17 in order to --
18 A. In my best knowledge, well, the first thing, you
19 know, all the medical professional, you know, everybody
20 in the medical profession has to, you know, protect and
21 preserve life, of course. And my, my daughter's alive,
22 she's very much alive for me, and I want, you know, I
23 want them to do what's needed to be done long time ago,
24 which is give her thyroid, give her treatment, the full
25 treatment that she needs. Put, put the, the, a tube,

1 the gastrostomy, and the, you know, PEG tube, or the
2 tracheostomy, so that she can be transferred to my home
3 or any facility who can, you know, that can take her.
4 Q. Did you happen to see, at any time when you first
5 came here, any abrasions on her body?
6 A. Well, yes. She, she had a, she had a, her bottom
7 was, she had an abrasion on her bottom. And it's not a
8 very long time ago.
9 Q. Is it still there?
10 A. Oh. She healed.
11 Q. It's healed?
12 A. It's healed.
13 Q. It's healed after they said she was dead?
14 A. Oh, yeah. Very much after that.
15 MR. O'MARA: Okay. That's all the questions
16 I have.
17 THE COURT: Mr. Peterson?
18 MR. PETERSON: I just have, I just have a
19 couple, Your Honor.
20
21 CROSS EXAMINATION
22 BY MR. PETERSON:
23 Q. Mr., Mr. -- Gebreyes?
24 A. Gebreyes. Yes, sir.
25 Q. Gebreyes.

1 A. Yes, sir.
2 Q. I, I may have this wrong, but I had, I had heard
3 from some source --
4 A. Yes.
5 Q. -- that you had inquired, or the family somehow
6 had inquired of a facility in Las Vegas that would take
7 Aden from Saint Mary's Hospital to be transported down
8 there, but only on the condition that, that if she
9 didn't show signs of life, as they define it, within
10 three days, that they would terminate life support. Am
11 I right about that, or did that, did that not happen?
12 A. Well, I want you to come back. Say it again one
13 more time.
14 Q. Yeah. And I may not be right about this. You
15 have to understand.
16 A. No problem. Sure.
17 Q. Okay. What, what --
18 A. I'll correct you if he's not right.
19 Q. What I was informed --
20 A. Yes.
21 Q. What I was informed is there were arrangements
22 made, I don't know who made them, arrangements made to
23 transport Aden to a facility in Las Vegas closer to
24 where you live --
25 A. Yes.

1 Q. -- but there were conditions attached to that.
2 And one of the conditions was that if she remained at
3 that facility for three days and didn't exhibit or
4 manifest what they determined to be signs of life, that
5 they would disconnect life support. Is that not right?
6 A. I'm not aware of that.
7 Q. Okay. Never heard of that?
8 A. No, I've never heard of that.
9 Q. Okay.
10 A. I never involve it. If it's --
11 Q. Okay.
12 A. -- yeah --
13 Q. Very good.
14 A. -- such a thing.
15 Q. And then I also wanted to know, Mr. Gebreyes,
16 were you, were you made aware, did you know that Dr.
17 Gomez had also done an examination of, of Aden? Did you
18 know that?
19 A. I just heard it now.
20 Q. That's the first time you heard that?
21 A. Yes, sir.
22 Q. Okay. The last question I have, then -- well,
23 was I correct when I made the representation to the
24 Court that Gomez, Dr. Gomez, had been retained but then
25 the family did not want him, or discharged him? Was

1 that, is that an accurate statement, or not accurate?
2 A. We didn't have any talk with Dr. Gomez. I don't
3 know who Dr. Gomez is.
4 Q. I'm sorry, I --
5 A. I don't know who Dr. Gomez is. I never talked to
6 him.
7 Q. Oh, you've never heard of him?
8 A. Well, I, I heard from the previous lawyer, Mr.
9 Dunlap, there will be some, some doctor from Renown, I
10 believe it was Renown, come in to do some kind of a
11 test.
12 Q. Yes.
13 A. And I said no.
14 Q. You said no?
15 A. Yes.
16 Q. Okay. All right. The last question is, is -- is
17 there a reason, and if so, what would be the reason,
18 that the family, if you want these procedures
19 performed --
20 A. Yes.
21 Q. -- which in layman's term, like a feeding tube
22 and also the tracheostomy --
23 A. Yes.
24 Q. -- if you want those performed, why hasn't, why
25 hasn't the family retained a doctor or found a doctor to

1 do that for them?
2 A. Because she's in Saint Mary's. She's on the hand
3 of Saint Mary's, and the (inaudible) doctors. They are
4 the one who handled her case from 1st of April.
5 Q. Okay. Fair enough, I understand that. But, but
6 you understand you have a right to go to different
7 doctors and seek treatment from anybody you want. Did
8 the family not make an effort to find some other doctor,
9 whether in Las Vegas or in Reno, in order to do the
10 things that you want to have done to Aden?
11 A. We did not, because we have -- we had confidence
12 that Aden is in Saint Mary's, until now, to get a proper
13 medical care that she needs. I mean, she's in a, I
14 believe she's in a hand of the best doctors. And I
15 believe doctors can do that. Any doctors in Saint
16 Mary's can do that. And I know that that's a very
17 short -- I mean, a very, it's not a long procedure. I
18 believe that it's a bedside procedure, actually. I have
19 seen that done myself.
20 Q. No. No. I, I want to make sure --
21 A. And I talked to, as I said previously, I talked
22 to Dr. Chu. She promised to do that, and she change her
23 mind.
24 Q. Yeah.
25 A. And, you know, I, I'm literally confused why, why

1 she is in the care of doctors I would go out and find
2 another one.
3 MR. PETERSON: Thank you very much.
4 THE WITNESS: You're welcome.
5 THE COURT: Any follow-up, Mr. O'Mara?
6 MR. O'MARA: I do have a couple.
7
8 REDIRECT EXAMINATION
9 BY MR. O'MARA:
10 Q. Did you ever meet Dr. Gomez?
11 A. I never met Dr. Gomez.
12 Q. Did you ever authorize him to see your daughter?
13 A. Never. Did you believe that you needed some
14 doctor at Saint Mary's that was authorized to work at
15 Saint Mary's to do the tracheotomy?
16 THE COURT: Be careful of your leading
17 questions, Mr. O'Mara.
18 MR. O'MARA: I'm sorry, Your Honor. Let me
19 rephrase it.
20 THE COURT: Okay.
21 BY MR. O'MARA:
22 Q. What was your belief on why you didn't contact
23 another doctor to come up to Reno and do these
24 procedures that you requested?
25 A. Well, I, you know, I thought about it, but as I

1 said to Mr. Peterson, she's in the hand of doctors. The
2 doctors has to, as I say, protect and, you know,
3 preserve life. They have to -- they're supposed to do
4 what, you know, they're supposed to do, which is help
5 Aden.
6 Q. Well, you said earlier that Dr. Chu said that she
7 would do the tracheostomy --
8 A. Yes.
9 Q. -- is that correct?
10 A. Yes, she did.
11 Q. And then she came back and said that it couldn't
12 be done because the staff --
13 A. Administration. To be correct, she said
14 administration and the lawyers are now involved.
15 Q. Okay.
16 A. And she's not a decision maker.
17 Q. Did that have any --
18 A. That's, that's her words.
19 Q. -- effect on your ability to, did that have any
20 effect on your mind as to whether or not you could get
21 another doctor from outside the hospital to do the
22 surgery -- to do these procedures?
23 A. And also I know that they not, Saint Mary's don't
24 allow any doctors to come in from outside. Because I'll
25 tell you why. We had -- I don't know what you call it.

1 There is some paper that you fill out to assess her. I
2 think, Your Honor, you the one who granted that for us.
3 I think it's somewhere in April. And I went back to
4 Mr. Earl, and I talk to him if he can find a doctor for
5 me. Because originally they couldn't fill out that
6 paper for me. I gave them that, you know, that blank
7 paper so --
8 THE COURT: You're talking about the
9 physician's certificate that would typically be attached
10 to a guardianship position?
11 THE WITNESS: Oh, yes. Yes. So I gave it
12 to Saint Mary's, and they said they -- I mean, the case
13 manager came back one day and she said, "Do you know
14 what it is?" And I said -- you know, I never been
15 through such a thing in my life, and I don't want anyone
16 to go through it. I said, "No, I don't know what it is,
17 but I want you to fill it." She said, "No, we cannot
18 fill it out for you." This is -- she said, "We had a
19 talk with our lawyer, who's an attorney, and we said no
20 to it." And she gave me the empty paper back after, I
21 believe it was probably five to six days.
22 And I try, I contacted Mr. Earl for that
23 matter, and he said he's going to find a physician. He
24 did find, actually, a physician. We actually wrote a
25 check for that physician to come in and do that thing

1 to assess Aden. And now all of a sudden Saint Mary's
2 wants to, to do it themselves, because they say they do
3 not allow anyone from outside to come and see her.
4 THE COURT: Counsel, do you have a copy of
5 the physician's certificate? I noted that it was not
6 filed immediately upon submission to the Court. Do you
7 each have a copy of that?
8 MR. O'MARA: I do not have a copy of it,
9 Your Honor, and I don't think there ever was one that
10 was submitted to the Court. It was explained, from my
11 understanding of the order, that there was no
12 physician's certificate. But after hearing statements
13 to the Court, the Court indicated that --
14 THE COURT: That was the first --
15 MR. O'MARA: -- she did not have to be
16 present.
17 THE COURT: -- emergency hearing. That was
18 the first emergency hearing. Then the second hearing
19 Mr. Earl provided a physician certificate that was
20 completed by Saint Mary's.
21 MR. O'MARA: Okay. I, I'm sorry, I don't
22 have it and I did not know it.
23 THE COURT: Do you have it, Mr. Peterson?
24 MR. PETERSON: No.
25 THE COURT: Okay. On a break the Court will

1 make sure you have copies of that.
2 Go ahead, Mr. O'Mara.
3 MR. O'MARA: That's all the questions I
4 have.
5 THE WITNESS: Okay.
6 THE COURT: Okay. Sir, you may be called
7 again --
8 THE WITNESS: Okay.
9 THE COURT: -- either to be questioned by
10 the Court or counsel.
11 THE WITNESS: Yes, ma'am.
12 THE COURT: But you're, you may sit down at
13 this point.
14 THE WITNESS: Thank you.
15 THE COURT: Thank you.
16 Let's take a two-minute break and I'll
17 ensure that you have the copies that are referred to.
18 Okay?
19 (A short recess was taken at this time.)
20 THE COURT: Okay. Counsel, are you ready to
21 proceed?
22 MR. O'MARA: Yes, Your Honor. I call
23 Dr. Byrne to the stand.
24 THE COURT: Okay. Doctor, you may step
25 forward.

1 PAUL BYRNE,
2 having been duly sworn,
3 was examined and testified as follows:
4
5 THE COURT: Mr. O'Mara?
6
7 DIRECT EXAMINATION
8 BY MR. O'MARA:
9 Q. Please state your full name. You need to speak
10 into the microphone that's up there.
11 A. Dr. Paul Byrne.
12 Q. And are you licensed -- or can you tell us what
13 your profession is?
14 A. I am a physician. I'm a neonatologist and
15 pediatrician.
16 Q. And how long have you been practicing law -- or
17 practicing medicine?
18 A. I graduated from medical school in 1957, and so
19 I've been practicing medicine since that time.
20 Q. Are you still in active practice?
21 A. No. I'm retired.
22 Q. And when did you retire?
23 A. When did I retire? About two years ago.
24 Q. Did you have -- were you contacted by Mr.
25 Gebreyes?

1 A. Yes, I was.
2 Q. And did you have an opportunity to review the
3 medical records of the adult ward, Aden?
4 A. Yes. I was provided with some medical records,
5 yes.
6 Q. Okay. What is your opinion?
7 A. That Aden is alive. Aden has never been dead.
8 She is seriously, she has serious problems. Aden is on,
9 on a ventilator, and needs that kind of treatment and
10 care.
11 Q. And what's the basis of that opinion?
12 A. Well, I reviewed the records, and I have seen her
13 at the, at the hospital. I've not examined her, but I
14 have gone there with Mr. Gebreyes to visit Aden, so I, I
15 know that she is on a ventilator and at Saint Mary's
16 Hospital.
17 Q. You've heard, I'm sure you've heard the opening
18 argument of Mr. Peterson with regard to accepted medical
19 practices.
20 A. Well, I heard some of the things. I, I don't
21 pick up all the words. I was in the back of the room,
22 and the volume was not good enough to hear everything.
23 Q. Okay.
24 A. And so I heard some of it, but not all of it.
25 THE COURT: Dr. Byrne, would you like a

1 hearing device to assist you? Because I want to make
2 sure you do hear everything.
3 THE WITNESS: I can hear now. I mean, I can
4 hear myself very well. I have hearing aids and they
5 work well, but such at the back of the room --
6 THE COURT: Okay.
7 THE WITNESS: -- I had to try to listen, but
8 I could not hear everything.
9 THE COURT: All right. Well, let me know,
10 because we can make sure, even when you're finished --
11 THE WITNESS: Yes.
12 THE COURT: -- you can be seated at a place
13 where you --
14 THE WITNESS: I'm doing okay now.
15 THE COURT: Okay.
16 THE WITNESS: And --
17 THE COURT: All right. Let me know.
18 THE WITNESS: Okay. Thanks, Your Honor.
19 BY MR. O'MARA:
20 Q. What do you believe that she is -- well, where
21 are you licensed?
22 A. I am licensed to practice in Ohio and Missouri
23 and Nebraska.
24 Q. Have you been an expert witness in any
25 courtrooms?

1 A. Yes, I have.
2 Q. Where?
3 A. I have testified in Ohio and Michigan and
4 Virginia.
5 Q. And have you testified with regard to brain dead?
6 A. Yes. All of those were regarding brain death and
7 related matters.
8 Q. All right. Now, as you determined after -- what
9 is she suffering from?
10 A. Well, Aden had an operation, and at the end of
11 that operation her heart rate went down and her blood
12 pressure went down, and it is presumed and said that she
13 had lack of oxygen during that time, and since that
14 time, Aden has not awakened. And, and so she continues
15 to be on the ventilator and, and is still in the
16 hospital.
17 Q. Does she have hypoxy?
18 A. Yeah --
19 Q. Hypoxia?
20 A. Yes. She had, at least one would presume and
21 assume that she had lack of oxygen. Certainly after,
22 after the procedure she was acidotic and had indication
23 of lack of oxygen during that time.
24 Q. And how about the hypothyroidism?
25 A. The hypothyroid? Yes. They, they documented

1 that, that her thyroid stimulating hormone was, was low.
2 The first time they documented it was on April the 3rd,
3 and her thyroid stimulating hormone was low at that
4 time. They didn't do any other thyroid tests, and -- at
5 least none that I was able to find any record of.
6 They did repeat the, they did do a thyroid screen
7 again, but not until two months later, in early June,
8 when, again, she has thyroid stimulating hormone, which
9 comes from her, her hypothalamus and her pituitary,
10 indicating that she has circulation to that part of her
11 brain.
12 And then her thyroid is very low. Her T3 is very
13 low, her T4 is very low. Both of these, all of this is
14 critical to healing, to healing -- it's critical to just
15 maintaining life, the thyroid is, and it's critical to
16 healing. Healing, healing of the brain and all other
17 tissues.
18 And so Aden is certainly deficient in thyroid in
19 June, and probably was deficient in, in thyroid already
20 in April. Although the only test that was done in April
21 was the thyroid stimulating hormone, and, and that, that
22 was low at that time. It's still low in June. And, and
23 her T3 and T4 are very low.
24 Q. What is the significance of the thyroid?
25 A. Well, the thyroid is a gland in our body that,

1 that we need to, for maintenance of our, of our health.
2 It's, it's commonly known that people get deficient in
3 thyroid, they need thyroid hormone. When the brain does
4 have a problem like lack of oxygen, then the, the
5 production of thyroid stimulating hormone shuts off
6 quickly. In, in a matter of minutes, hours, they don't
7 have enough thyroid stimulating hormone. Then they
8 don't have enough thyroid hormone. And, and when the
9 patient does not have thyroid hormone, then it's, it's
10 difficult to do anything more than just maintain your
11 life, and certainly difficult to heal anything that
12 would be injured, like the, like the brain from lack of
13 oxygen.
14 Q. Now, did she also have diabetes?
15 A. Does she also have diabetes?
16 Q. Yes.
17 A. Yes. She probably has diabetes insipidus.
18 Again, that's related to the, to the brain and control
19 of salt and water. She many times has had very high
20 sodium levels, which, and the like, so, so she has
21 diabetes insipidus also.
22 Q. Okay. And are they treating her for that?
23 A. Well, they've been treating that and paying
24 attention to that. It's the kind of thing that takes a
25 lot of attention to, to keep that in balance, and, and

1 so certainly they've known about it. I don't have, I
2 never got any nurses' notes, so I don't have any of
3 those kinds of things to find out details about what
4 they were doing, but put the pieces together. They were
5 paying attention to it, but she continued to have
6 difficulty.
7 Q. Okay. Now, anywhere in the record do you see her
8 being treated for the hyperthyroidism?
9 A. No. As far as I can tell, she has not been
10 treated for hypothyroidism, no.
11 Q. Do you think that that would help?
12 A. Yes, it would help very much. And actually, when
13 I look at a record like this and see that they
14 identified and looked for TSH and didn't look at the
15 other things, and deficiency in thyroid, the patient,
16 when they don't have enough TSH, they don't have enough
17 thyroid, and then they get hypothyroid.
18 And there's a condition in hypothyroidism called
19 myxedema. It's a kind of edema, it goes all over their
20 whole body. So their initial difficulty with their
21 brain causes the brain to swell, then deficient thyroid
22 stimulating hormone -- thyroid, then the whole, the
23 whole body can swell every place. And then the brain
24 swelling that was initially there from the lack of
25 oxygen gets compounded by the hypothyroid swelling that

1 that's there. And, and treatment for that has a
2 possibility to help, but she has to get treated, and,
3 and up until now, she has not been treated for
4 hypothyroidism.
5 THE COURT: And you're saying "hypo," not
6 "hyper;" right?
7 THE WITNESS: Yeah, "hypo."
8 THE COURT: "Hypo," yes.
9 THE WITNESS: That's too little --
10 THE COURT: Yes.
11 THE WITNESS: -- thyroid. Yes.
12 THE COURT: Yes.
13 BY MR. O'MARA:
14 Q. Are there any studies showing that the thyroid
15 use is helpful to the brain?
16 A. Yes, there's studies. And I wrote out some of
17 those and put some of that together and submitted it in
18 the affidavit that I put together in preparation for
19 coming here. And so some of those articles and
20 references and the like are included there, yes.
21 Q. Is there, have you participated in any cases
22 where the patient was brain dead and they told you to --
23 A. Yes, I have.
24 Q. Okay. Tell us what happened.
25 A. Well, the first patient I had, by the name of

1 Joseph in 1975, was on a ventilator for several weeks.
2 An EEG was done and was said to be consistent with
3 cerebral death. It was repeated, it was the same, and
4 it was suggested to stop treating him. I continued to
5 treat him. Eventually he got off the ventilator. He
6 went to school, he got excellent grades, ran track,
7 played baseball, he's married, has three children.
8 But it was in 1975 because of Joseph that I began
9 to investigate the question of, look into brain death,
10 and, and since that time I've had a number of other
11 patients that I've seen that have had the declaration of
12 brain death and, and yes.
13 Q. And they've recovered?
14 A. Yes. A patient by the name of Lewis was declared
15 brain dead. And he still has some difficulty with
16 walking, but he shakes hands and talks with me. A case
17 that, that was, that got a lot of notoriety in the news
18 was Jahi McMath, and Jahi McMath was declared brain dead
19 in December of 2013. I saw her a few weeks ago. She's
20 very much alive and she is at home. She's still on a
21 ventilator. And, and then there, Joseph, another
22 Joseph, was a boy in Texas. He too had the declaration
23 of brain dead. He too -- Jahi got on thyroid, and also
24 Joseph got on thyroid, and it's helped both of them. Or
25 at least, certainly, they're still alive, so it hasn't

1 hurt them to give them thyroid.
2 Q. Is it your medical opinion that if Aden receives
3 thyroid treatment that she will get better?
4 A. Yes.
5 Q. Now, what about the tracheostomy. Can you
6 explain why that's necessary?
7 A. Yes. Aden needs a tracheostomy. Actually, most
8 any patient that's on an endotracheal tube for several
9 weeks needs the tracheostomy because of the swelling and
10 the like that's there. And so they need the
11 tracheostomy to help their vocal cords to heal, but also
12 to make easily accessible so that the patient can be
13 continued on a ventilator and hopefully be weaned from
14 the ventilator. But they need a tracheostomy in order
15 to take care of them. And most of the time it gets done
16 when they're on a ventilator, or endotracheal tube, for
17 a few weeks, most of the time it gets done. It was not
18 done, but most of the time it gets done.
19 Q. Is there a problem with the, the length of time
20 and the muscles in the throat?
21 A. Yes, that's, that's part of what happens. We, we
22 go a little bit longer -- when I first began to do these
23 things, the endotracheal tubes were, were not of the
24 same kind of plastic that they are now, so you can go a
25 little bit longer. In the beginning we would only go a

1 few days with an endotracheal tube, but now a few weeks.
2 But once the patient has an endotracheal tube for
3 several weeks, they usually, and almost always, need a
4 tracheostomy.
5 Q. And why is that?
6 A. To take care of them, and, and it makes it easier
7 to take care of them. And, and part of the reason, if
8 somebody has an endotracheal tube, they need to be in a
9 hospital where there's someone who can intubate them if
10 the tube comes out. Once they have the tracheostomy,
11 the patient can be cared for at home or someplace where
12 you don't have people skilled at intubation. So the
13 tracheostomy gets done to help them, treat them
14 initially, and then those that continue on a ventilator,
15 it helps them so they can be discharged to, to someplace
16 other than an acute care hospital.
17 Q. And what's the reason for the gastrostomy?
18 A. Yeah, the gastrostomy is done to, primarily to
19 provide nutrition, but it also gives easy access to the
20 stomach and facilitates treatment of the patient. And
21 again, gastrostomy is the kind of thing that -- as a
22 neonatologist for many years we did gastrostomies when
23 babies got operations, and so we knew about the benefits
24 of gastrostomy.
25 Well, it's into adults, and nowadays they have

1 the PEG tube that's easy to, relatively easy to put in,
2 and that kind of thing. So patients that require
3 long-term care and, and long-term nutrition commonly get
4 gastrostomies done. And they are abbreviated as PEG
5 tubes. And it's common to be done. Aden needs a
6 gastrostomy and, but it hasn't been done thus far.
7 Q. So in addition to those, for the gastrostomy, I
8 guess, she would need water and nutrition; right?
9 A. Yes. She's, Aden has been getting nutrition in
10 the vein, but the nutrition in the vein has limitations
11 to it. It's better to get nutrition through the
12 intestinal track, and can be more complete.
13 Furthermore, for the brain to heal, it needs good doses
14 of vitamin D and riboflavin and other nutrients for the
15 brain to heal.
16 The brain does heal, but it takes a long time to
17 heal. And during that time they need, need care, they
18 need, you know, she needs thyroid, and will continue to
19 need thyroid until the circulation improves. And she
20 has to have some circulation to her brain, or she
21 wouldn't be able to make TSH. And -- but, she has some,
22 but, but not enough. So that, providing thyroid,
23 continue to treat her with the ventilator, give her
24 nutrition, proper nutrition. And in that outline that
25 I've provided for the Court, I provided some things that

1 are helpful in, nutritionally to help the brain to heal.
2 Q. Is it your opinion that if she receives the
3 thyroid treatment, the tracheostomy and the gastrostomy,
4 that she can be transported down to Las Vegas?
5 A. Yes.
6 Q. She would still need a ventilator; is that
7 correct?
8 A. Yes. I would anticipate that she will need a
9 ventilator because she's been on it for so long, so it,
10 she has to get healing and, and then perhaps she'll be
11 able to be weaned from the ventilator. But for right
12 now, she, it seems like she will continue to need the
13 ventilator.
14 Q. You've had a chance to be with Mr. (Inaudible)?
15 A. Yes, I have.
16 Q. Do you think he's capable of taking care of her
17 at home?
18 A. Yes. I, I believe that he's very capable. And
19 obviously no one person can take care of a patient like
20 this. It takes a team of people. And, and, you know,
21 it takes a dedicated person to lead the team. But she
22 needs nursing care around the clock and needs, he'll be
23 able to do it, but he will need help to, to do that.
24 MR. O'MARA: I have no further questions,
25 Your Honor.

1 THE COURT: Mr. Peterson?
2 MR. PETERSON: Thank you, Your Honor.
3
4 CROSS EXAMINATION
5 BY MR. PETERSON:
6 Q. A couple of preliminary questions, Doctor.
7 First, I thought I heard you say that you were first
8 contacted in this case by Mr., Mr. Gebreyes; is that
9 right?
10 A. That's correct.
11 Q. And when was that?
12 A. Oh, several weeks ago. I do not recall --
13 Q. When did you --
14 A. -- the exact date.
15 Q. When did you manage to get out here to Reno to --
16 A. Do what? I'm sorry.
17 Q. When did you manage to come out to Reno to --
18 A. I came here on Sunday.
19 Q. This Sunday past?
20 A. Yeah.
21 Q. Okay. You've been here ever since?
22 A. Yes.
23 Q. All right. And I think I heard you said that,
24 say that you went out to the hospital and you took a
25 look at Aden?

1 A. I did.
2 Q. Okay. When was that?
3 A. On Monday.
4 Q. Who did you go with?
5 A. With Mr. Gebreyes.
6 Q. Just the two of you?
7 A. Yes.
8 Q. Okay. So did you -- and you went, when you went
9 to see Aden --
10 A. I'm sorry, what?
11 Q. When you went to see her --
12 A. Yes.
13 Q. -- how much time did you spend there?
14 A. I'm sorry. What did what?
15 THE COURT: Can you maybe slow down, or --
16 okay.
17 MR. PETERSON: I'll get a little closer.
18 Excuse me. Can I pull this out, Your Honor?
19 THE COURT: Yes, but then we have to connect
20 the microphone to that. So the deputy can help you set
21 that up.
22 Deputy, I'm going to ask you to stay by the
23 podium until I can make sure the video is also picking
24 up Mr. Peterson's appearance.
25 THE DEPUTY: You've got it, Your Honor.

1 THE COURT: And I won't know that until he
2 speaks.
3 Okay. So deputy, do you mind moving the
4 podium all the way over to the corner of the table?
5 MR. PETERSON: Is this going to be all
6 right, Your Honor?
7 THE COURT: Yes. That's fine.
8 BY MR. PETERSON:
9 Q. Can you hear me a little bit better?
10 A. A lot better.
11 Q. I'll try, I'll try to speak up a little bit.
12 A. Yes.
13 Q. I have a little something in my throat, here.
14 I think what I was asking you was when you went
15 to the hospital with Mr. Gebreyes, you went to see Aden.
16 I wanted to know how much time you spent in there.
17 A. Oh, 15 minutes.
18 Q. Okay. And I know you didn't examine her.
19 A. No.
20 Q. You said that; right?
21 A. Right.
22 Q. Okay. So these were just visual observations
23 that you made?
24 A. That's correct.
25 Q. Okay. And when you were contacted by Mr.

1 Gebreyes, did he contact you through your website?
2 A. I, I -- email, some way or another. Whatever. I
3 don't, I don't recall.
4 Q. Okay. Now, you probably know that you're fairly
5 well-known in the medical community in these kinds of
6 cases, and there's a lot of literature published about
7 you out there. You're aware of that?
8 A. I'm aware, I suppose, of some of it. Some of it
9 I write myself.
10 Q. Right. And among the things that you do write
11 are basically invitations to people who have situations
12 like this, or similar situations where they want to be
13 educated, that you'll, you'll offer your services to
14 them to come out and maybe give a tutorial or a lecture
15 or a presentation or testimony; right?
16 A. Yes.
17 Q. And you've done that quite a bit over the last
18 many years, I take it; right?
19 A. Yes.
20 Q. Okay. So I assume in this particular instance,
21 you know, you don't know, but -- do you know if that's
22 how Mr. Gebreyes found you, basically through the
23 internet?
24 A. I suppose. He found me someplace. I don't know
25 how.

1 Q. All right. And are you being paid for your
2 services here, or is this gratis like you do sometimes
3 for your lectures?
4 A. Am I doing what, sir?
5 Q. Are you being paid for your services here or are
6 you doing this kind of gratis --
7 A. No, I am not getting paid.
8 Q. Okay. So which you, which you do for lectures
9 and things of that nature, right, from time to time?
10 A. Sometimes they offer me an honorarium, and
11 sometimes they don't.
12 Q. Okay. Now, you, I think you told the Court that
13 you're a neonatologist?
14 A. That's correct.
15 Q. And I think there was another specialty that
16 you --
17 A. Pediatrics, yes.
18 Q. Pediatrics. Okay. You are not a neurologist;
19 right?
20 A. No, I am not.
21 Q. Okay. And you've never been a neurologist,
22 obviously; right?
23 A. No.
24 Q. Okay. Now, you mentioned one of the cases that
25 you got involved with, and I believe it was -- I may

1 have the name wrong. I don't know how you pronounce it.
2 I know the last name is McMath.
3 A. Oh. Jahi.
4 Q. Jahi?
5 A. Jahi McMath, yes.
6 Q. Right. In fact, that was just a few years ago in
7 Oakland, California; right?
8 A. Actually, Jahi was declared brain dead, and even
9 a death certificate was issued on her December the 12th,
10 2013, yes.
11 Q. And that resulted in a court hearing and a court
12 proceeding; right?
13 A. Yes.
14 Q. And you testified in it.
15 A. I submitted an affidavit. I did not go to court.
16 Q. Okay. And there were doctors that testified on
17 behalf of -- I forget which the hospital was. But there
18 was a hospital in Oakland that was basically wanting,
19 like Saint Mary's here, to disconnect services -- or
20 excuse me, the life support apparatus; right?
21 A. Well, on, Jahi was on life support --
22 MR. O'MARA: Actually, Your Honor, I'm
23 not --
24 THE WITNESS: -- on a ventilator.
25 MR. O'MARA: -- sure that question is very

1 clear. Hold on a minute.
2 MR. PETERSON: I'll restate it. I'll
3 restate it. It's --
4 MR. O'MARA: Because he --
5 THE COURT: Okay.
6 MR. O'MARA: -- didn't indicate he was at
7 the hearing, and he was asking --
8 THE COURT: Counsel said he's going to
9 restate it.
10 MR. O'MARA: -- about doctors testifying at
11 the hearing.
12 THE COURT: Counsel said he's going to
13 restate the question.
14 MR. O'MARA: Thank you, Your Honor.
15 BY MR. PETERSON:
16 Q. What was involved in that proceeding, you know,
17 simply stated, something similar to what's involved in
18 this proceeding; right?
19 A. Yes. Not -- that's correct. Similar.
20 Q. Okay. And the outcome of that case, as you, as
21 you well know, is that the Court considered your
22 presentation, your affidavit, I guess, considered a
23 counter presentation, the evidence, and then decided
24 that the hospital could, could remove the life
25 supporting services. Am I right about that?

1 A. I do not know what the Court considered so far as
2 my affidavit was concerned. I just submitted it. I do
3 not know what the Court considered.
4 Q. I really was more interested in the result. You
5 know what the result of the hearing was; right?
6 A. I know that Jahi is still alive, yes, I do know
7 that.
8 Q. But you know the result of the hearing was that
9 the Court refused to order the hospital to continue the
10 life support services. Did you know that?
11 A. Yes.
12 Q. Okay. And then the, the judge refused to order
13 the hospital to insert the tracheostomy that you've been
14 testifying about here today; right?
15 A. Yes.
16 Q. All right. And -- but somehow, although that
17 didn't happen, the Court didn't order that, Jahi was
18 transferred to New Jersey; correct?
19 A. Correct.
20 Q. And so somebody in New Jersey, then, made
21 arrangements to have those things done that were
22 recommended by you; right?
23 A. Well, certainly I'm supportive of them. I don't
24 know that they were recommended by me. I do know that
25 they were done in New Jersey.

1 Q. Okay. And that's because the Court did not order
2 the hospital in Oakland, California, to do it; right?
3 A. I would think that that's correct. I'm not
4 privileged to whatever the Court did.
5 Q. Okay. So now Jahi, to your understanding, or
6 knowledge, is at home; is that right?
7 A. Jahi is at home. I visited her in her home a few
8 weeks ago in New Jersey, yes.
9 Q. Okay. So in connection with the services that
10 you're performing for the family here --
11 A. Yes.
12 Q. -- what efforts, if any, have you made to find
13 somebody, some doctor, whether in New Jersey or
14 elsewhere in your, in your connections in the medical
15 community, to do the things that you would like to have
16 done?
17 A. I'm, I don't follow the question, sir.
18 Q. In other words, you understand, you clearly
19 understand that the hospital, my client, Saint Mary's
20 Hospital, has, believes that under the Uniform
21 Determination of Death Act, that, that Aden has been, is
22 deceased. You know that's our position; right?
23 A. Yes.
24 Q. Okay. You know that's our position, and then you
25 also know that it's our position that because of that

1 circumstance -- I know you disagree, I'm not trying to
2 get you to agree to it -- that because of that
3 circumstance, the hospital has taken the view, the
4 opinion, that you disagree with, that, that Aden is
5 deceased, that they will not perform the tracheostomy or
6 the feeding tube that, or any of the other things you've
7 recommended. You're aware that we're not, the hospital
8 is not doing that.
9 A. Yes, I am.
10 Q. Okay. My question, then, is if, why -- what
11 efforts, if any, have you made on behalf of the family
12 to arrange for a doctor or a physician, whether maybe
13 the same people in New Jersey or somewhere else, to come
14 do and perform these procedures that you recommend?
15 What efforts have you made?
16 A. Well, I haven't made any efforts to get any of
17 these done so far as Aden is concerned.
18 Q. What efforts has the family made, to your
19 knowledge?
20 A. I, I, whatever the family has done, again, I'm
21 not part of that either.
22 Q. Do you think, Doctor, that if a, if a colleague
23 of yours, like Dr. Heide sitting in the back --
24 A. I don't know who that doctor is.
25 Q. Okay. Let's just say a colleague of yours,

1 someone in your profession --
2 A. Sure.
3 Q. -- has taken the view, that you disagree with, I
4 understand, that the patient is deceased and believes
5 morally and ethically that they will not and should not
6 perform those procedures that you recommend, that the
7 Court should make them do it?
8 A. Well, I, I don't know the answers to all of those
9 kinds of things, what the Court should do and should not
10 do. I do know that, that Aden is hypothyroid and needs
11 thyroid, and I do know that Aden needs a tracheostomy
12 and needs a gastrostomy. I do know that.
13 Q. All right. You know, Doctor, there's quite a bit
14 of stuff that has been published not only about you, but
15 by you. You're aware of that; right?
16 A. Yes, sir.
17 Q. You've written a book; right?
18 A. I have several books.
19 Q. You've written many articles; right?
20 A. Yes.
21 Q. And you, and you, on the internet, also
22 frequently blog and write about topics like this, do you
23 not?
24 A. I do not.
25 Q. You do not?

1 A. No.
2 Q. Okay.
3 MR. PETERSON: What I'd like to do, Your
4 Honor, is -- and I've spoken with your clerk about this,
5 who asked me, directed me to ask you how to proceed.
6 What I would like to do is examine the witness with
7 respect to Exhibits 1 through 9 that I've attached to my
8 opposition. What I thought would be easier for me,
9 anyway, is if I just gave him the entire, if we could
10 just mark it.
11 THE COURT: Has it been marked yet?
12 MR. PETERSON: It has not been marked,
13 because --
14 THE COURT: You may mark the --
15 MR. PETERSON: -- we wanted to clear it with
16 you first.
17 THE COURT: You may mark the exhibits.
18 These were filed in? Do you have another copy?
19 MR. PETERSON: I do.
20 THE COURT: Okay.
21 MR. PETERSON: Give it to her?
22 THE COURT: Yes.
23 THE CLERK: Your Honor, remove the
24 opposition for motion (inaudible)?
25 THE COURT: Yes. Are you requesting that

1 they be marked as one exhibit?
2 MR. PETERSON: That's what I was going to
3 do, Your Honor.
4 THE COURT: Are you going to be able to keep
5 it organized?
6 MR. PETERSON: That's what I thought.
7 THE COURT: Okay.
8 MR. PETERSON: Be easier for me.
9 THE COURT: All right. Deputy, will you
10 move that podium just slightly more to, to the west side
11 of the courtroom?
12 THE CLERK: So these will all be marked as
13 Exhibit 1.
14 MR. PETERSON: Thank you. This is for you?
15 Give this one to the witness?
16 THE CLERK: Yes, please.
17 THE COURT: And then will you move the table
18 slightly more to the west side of the courtroom? I'm
19 only getting half of your face, Mr. Peterson, so we're
20 just going to do a little bit of furniture moving.
21 MR. PETERSON: Lucky you.
22 THE DEPUTY: How's that, Your Honor?
23 THE COURT: It's much better.
24 MR. O'MARA: As I understand it, Your Honor,
25 these documents are just marked as exhibits.

1 THE COURT: Just marked at this point, Mr.
2 O'Mara, not admitted.
3 THE WITNESS: This is -- will I be able to
4 keep this?
5 THE COURT: Mr. Peterson will guide you, and
6 so let's see how that's done before I --
7 THE WITNESS: Yes.
8 THE COURT: -- interject.
9 THE WITNESS: I just need to have some kind
10 of record --
11 THE COURT: Yes.
12 THE WITNESS: -- about what I did here.
13 BY MR. PETERSON:
14 Q. What I'd like you to do, Doctor -- what this
15 document is, it's a filing that I made with the Court.
16 THE COURT: You can approach the witness, if
17 you'd like.
18 BY MR. PETERSON:
19 Q. What I've done is I made a filing with the Court,
20 and -- what happened to the top part?
21 A. I'm sorry.
22 Q. I thought that was -- anyway --
23 A. That's all it was.
24 Q. You're already ahead of me. And then attached to
25 the filing are exhibit numbers.

1 A. Yeah.
2 Q. And you can see --
3 A. Yes.
4 Q. -- that's Exhibit 1. And they're in order, going
5 back. They're not stapled, unfortunately.
6 A. Yes. That's okay.
7 Q. I'm going to ask you about some of these
8 exhibits.
9 A. Sure.
10 Q. What I'd like you to do is turn to Exhibit 2.
11 Let me know when you get there. It's the second article
12 there.
13 Are you there on Exhibit 2?
14 A. Yes.
15 Q. Have you ever seen it before?
16 A. I can't tell you that I did or did not, but I
17 won't say that I didn't.
18 Q. You're quoted at length there.
19 A. All right.
20 Q. If you look at the right-hand corner there,
21 you'll see a little logo there. It says LifeSite.
22 A. LifeSite, yes.
23 Q. Okay. You're familiar with LifeSite, are you
24 not?
25 A. I don't know. I'm familiar with LifeSite News

1 That comes across. It is LifeSite News.
2 Q. Okay. Anyway, you're being quoted here, and I
3 want to see if you're being quoted accurately. All
4 right? If you look at the second paragraph on the first
5 page -- you see it? Are you with me there? It says:
6 The first thing about brain death is that brain
7 death is not true death.
8 You look confused. Are you not there?
9 A. Yes, I have that.
10 Q. Okay. You were looking at me. I thought you
11 were going to read it, but I'll read it to you.
12 A. Oh. I thought, I thought you just read it.
13 Q. I haven't finished.
14 A. Oh. Go ahead.
15 Q. The first thing about brain death is that brain
16 death is not true death. It never was and never will
17 be, said Dr. Paul Byrne, a pioneer neonatologist.
18 Now, did you make that statement? Is that, is
19 that a, is that an accurate attribution of a statement
20 that you made?
21 A. That's accurate, yes.
22 Q. And you believe that, do you not?
23 A. Absolutely.
24 Q. Okay. And then I'd like you to turn to the
25 second page of this exhibit.

1 THE COURT: Still Exhibit 2?
2 MR. PETERSON: Still on Exhibit 2. On the
3 second page of the exhibit.
4 BY MR. PETERSON:
5 Q. Are you with me there, Doctor?
6 THE COURT: All Exhibit 1.
7 MR. PETERSON: Am I on the wrong exhibit?
8 THE COURT: No.
9 BY MR. PETERSON:
10 Q. Are you with me on the same, on the same --
11 A. Second page, yeah.
12 Q. Yeah. I want you to drop down to about the
13 middle of the page where you're again being quoted.
14 It's the part that says: Byrne explained. Are you we
15 me on that?
16 A. Yes.
17 Q. Okay. It says:
18 Byrne explained that someone does not, quote,
19 become dead, end quote, because a doctor declares
20 someone, quote, brain dead, end quote, although they
21 intend it that way.
22 Do you see that?
23 A. Yes.
24 Q. Now, is that an accurate statement?
25 A. Yes.

1 Q. And you believe that one as well; right?
2 A. Yes.
3 Q. Now, you do know what, you are familiar with the,
4 the Uniform Declaration of Death Act, you know about
5 that law, do you not?
6 A. No, I'm not.
7 Q. I thought that you had written about the Uniform
8 Death Act on several occasions.
9 A. I'm sorry, sir, but I'm not familiar with what
10 you're talking about. I'm sorry, sir.
11 Q. Well, the Uniform -- let me see if I can refresh
12 your recollection. If you haven't, I can refresh it
13 with a document that we're going to come to in a minute.
14 But are you, are you -- you mentioned, I believe, and I
15 forgot the context, but I think you said something in
16 1975, or possibly in 1978, you got, you started getting
17 involved in the, in these kinds of episodes and issues.
18 Am I right about that?
19 A. Yes. Because of Joseph I began to study this
20 subject.
21 Q. All right. Well, you're familiar with, I believe
22 you have written that the Uniform Determination of Death
23 Act was, basically came about as a result of a coterie
24 of Harvard professors that came up with this notion of
25 brain death.

1 A. That's correct, yes.
2 Q. Okay. And didn't you, don't you also know and
3 understand and have written that it is out of that
4 intellectual exercise that the Uniform Determination of
5 Death Act, which is enacted throughout the United
6 States, came about?
7 A. Yes.
8 Q. Okay. Thank you. All right. And you are, you
9 do know, then, that despite what you say, that someone
10 does not become dead because a doctor declares someone
11 brain dead, that that is precisely what the Uniform
12 Determination of Death Act provides for. Do you know
13 that?
14 A. Well, you're saying it, and, and so I've, I have
15 no reason to disagree with what you're saying, but
16 you're putting some words in there. And so go from
17 there.
18 Q. Well, regardless, you disagree with the whole
19 concept, do you not?
20 A. Well, brain death is not true death.
21 Q. Okay.
22 A. People who are declared brain dead are alive.
23 They're not truly dead, they're alive.
24 Q. Okay. Let's drop down a couple, skip the next
25 paragraph and go to the next one. It starts with:

1 Brain death. Are you with me there?
2 A. You're still on page two?
3 Q. Yeah, I'm still on that same --
4 A. How far down?
5 Q. Just skip the next paragraph --
6 A. Okay.
7 Q. -- where you were. Go to the next one. Are you
8 there?
9 A. Yes. Sure.
10 Q. Okay. And you're being quoted again, and you
11 say:
12 Brain death was invented, conjured, made up, to
13 get organ transplants, he said.
14 Did you make that statement?
15 A. Yes.
16 Q. And you believe that statement.
17 A. I do believe that. And that was the number two
18 reason that was given by the Harvard committee. The
19 number one reason was to turn off ventilators when
20 patients are resuscitated and the result is less than
21 desirable.
22 Q. Okay. Let's go, Doctor, to the next page of this
23 article, if you would, please. That would be on the
24 top. It's page three of five. Are you with me on page
25 three of five?

1 A. Yes.
2 Q. And I'd like you to drop down to the middle part
3 of the page. Starts with: Byrne said. Are you with me
4 there?
5 A. Okay.
6 Q. Okay.
7 Byrne said that only New York and New Jersey have
8 a conscience clause that offers specific protections to
9 a patient declared brain dead. Primary caregiver does
10 not hold cessation of brain death -- or excuse me -- the
11 brain activity -- whose primary caregiver does not hold
12 cessation of brain activity as true death. In other 48
13 states, there is nothing in their laws to give any kind
14 of protection to the person declared brain dead. All of
15 the laws, and I mean all of them, all revolve around
16 getting organs, he said.
17 Are you accurately quoted there?
18 A. Yes.
19 Q. And you believe all that, do you not?
20 A. Yes. And also to turn off ventilators, as I've
21 said just a minute ago.
22 Q. All right. I'd like you to go to the next
23 exhibit in order. It's Exhibit 3. Now, Exhibit 3 is
24 an, is an article written by a physician who is, who
25 has, was somewhat critical of you. And have you ever

1 seen this document before?
2 A. No.
3 Q. All right. I'd like, you're being quoted again,
4 but I'd like you to go to the second page. And I'd like
5 you to go down to the middle part of the page where
6 there was some quotations indented, where you're being
7 quoted, and I'll ask you about that. And I'd like to
8 ask you about the second quote. It's the one that
9 starts with: So-called. Are you with me?
10 A. Yes.
11 Q. Okay.
12 MR. O'MARA: Down near the bottom?
13 MR. PETERSON: Yes.
14 BY MR. PETERSON:
15 Q. Okay. Quote:
16 So-called brain death, or cardiac circulatory
17 death, are terms concocted by transplant physicians and
18 their allies who wanted to enlarge the donor pool by
19 including patients who are really not dead in the
20 traditional sense of the word.
21 Do you see that?
22 A. Yes.
23 Q. And the traditional -- by the way, are you being
24 accurately quoted?
25 A. Yes. I don't know where they got it from, but it

1 sounds like something I would say.
2 Q. It's certainly something you believe; right?
3 A. It's true.
4 Q. Okay. You believe it to be true. Okay. And
5 when you say "not dead in the traditional sense of the
6 word," does that, does that mean in the traditional
7 sense of the word that their heart isn't beating or that
8 there's a cell alive in the body somewhere? What do you
9 mean by "traditional sense of the word"?
10 A. Well, certainly people have been declared dead
11 for years by having no heartbeat, no circulation, no
12 breathing, no response, and that kind of thing, and so
13 that would be, I suppose, the traditional sense of the
14 word, if you, if you --
15 Q. That would be true --
16 A. -- do that. But it's nothing new. People have
17 known that for a long time.
18 Q. Well, I believe that used to be the O'Connell
19 definition of death. But that would be true, Doctor,
20 someone could have absolutely no brain function, but
21 provided, you know, that their body continues to be
22 nourished by artificial means, or ventilated, those
23 cells remain alive, notwithstanding that there's no
24 brain function; right?
25 A. Well, it isn't just cells, you know, it's persons

1 who stay alive.
2 Q. Yeah.
3 A. Not cells. It's human beings who stay alive.
4 Q. I guess what I'm asking you -- and I may not be
5 asking it the right way. This would be a layman's way
6 to put it. That is, if I understand what your opinions
7 are, that a brain can be totally non-functional with
8 respect to all of the normal tests to ascertain a
9 non-functional brain, but, but if the body remains on a
10 ventilator and has a feeding tube and there are organs
11 that remain alive in the body, then in your sense, in
12 your belief in the traditional sense of the word, that
13 that person is alive; right?
14 A. Well, I, I don't think the traditional sense of
15 the word, patient's on a ventilator, I don't believe
16 that that's in the traditional sense of the word at all.
17 And, and you're putting some things together there, but
18 that's what you're saying. But what can I say to that?
19 I, I think that there's clearly a difference between
20 life and death, and the state of being changes at death,
21 and you cannot be both alive and dead at the same time.
22 Life has to do with cells, tissues, organs, and,
23 made up into systems, and there's an interdependent of,
24 of these cells, tissues, organs, and systems that
25 maintain the unity of the body. And my position would

1 would be that no one should be declared dead unless
2 there is destruction of at least the three major systems
3 of the body.
4 Q. And those --
5 A. The circulatory system, the respiratory system,
6 and the brain. And certainly I would not declare
7 somebody dead who has circulation and respiration. I
8 would not participate in that.
9 Q. Now, I guess if I, if I got what you said right,
10 in order, in your view, to be declared dead, it has to
11 be all three of those things.
12 A. Yeah. You have to be dead or I'm not going to
13 declare you dead.
14 Q. Yeah. But all three of those things -- you've
15 mentioned three systems.
16 A. Well --
17 Q. All three of them have to be gone; right?
18 A. There are 11 systems and, that we talk about in
19 the human body. There are three major systems. So, so,
20 and it's -- death, you know, once the body changes from
21 the living body to the dead body, it's the remains of
22 someone. And yes, we can tell things in cells and
23 tissues and, and organs.
24 And, and so in order to, in order to try to put
25 it together, there's an understanding that the major

1 systems that, that maintain the unity of the body are
2 the circulatory system, the respiratory system, and the
3 brain. And I would say that no one should be declared
4 dead unless there is destruction of the circulatory and
5 respiratory systems and the brain. And, and certainly I
6 would not declare somebody dead who has a beating heart,
7 circulation, and respiration, and certainly Aden has all
8 of these things.
9 Q. But that was, you made my question -- thank you
10 for your explanation. I think it was a little bit more
11 than, more that what I really wanted to know, and I want
12 to make sure I understood it correctly. You said there
13 were three major systems --
14 A. Yes.
15 Q. -- circulatory, respiratory, brain.
16 A. Yes.
17 Q. What I really wanted to know was: Is it your
18 opinion that all three have to be shut down to be
19 declared dead, or would any one suffice?
20 A. I would say that not one would suffice, that,
21 that certainly when any one of those has difficulty, we
22 have to do things to be supportive and, and, and the
23 like. And incidentally, I published on this in --
24 Q. Yes.
25 A. -- a law journal, the Gonzaga Law Review. And so

1 it's, the things I'm saying are not new.
2 Q. But, but can't there be a body with no brain
3 function that could be, that could be, that could
4 sustain or have the circulatory function and the
5 respiratory function artificially administered, with no
6 brain function? Isn't that possible? Or not?
7 A. Well, it depends on what you mean by "no brain
8 function," that kind of thing. And, and certainly the,
9 the beating of the heart is intrinsic to the heart, and,
10 and it goes on without the brain, doesn't need the
11 brain, and it beats in all of us, and that kind of
12 thing. It does it on itself. It has its own brain, its
13 own nervous system that starts the beat, and it even
14 senses it and tells it to stop.
15 Q. Let's go to the next exhibit, which is Exhibit 4.
16 The next one in order.
17 A. What's that?
18 Q. The next exhibit, please. The next exhibit.
19 A. Oh.
20 Q. Which is 4. Are you with me?
21 A. Not quite, sir.
22 Q. Okay.
23 A. I found it, Number 4, yes.
24 Q. Are you with me? Okay. So I'd like you to turn
25 to -- this is a four-page exhibit. Turn to page two of

1 that exhibit. And by the way, I should have asked you
2 first, this appears to be an article you wrote.
3 A. Yes.
4 Q. Okay. And so let's turn to -- stay with me on
5 page two. Okay? Are you with me?
6 A. Yes.
7 Q. Okay. You say in the second full paragraph, the
8 one starting with: The living body. Are you with me?
9 A. Okay.
10 Q. The living body is composed of cells, tissues,
11 and organs, organized according to functions as 11
12 systems. An interdependent functional relationship
13 among cells, tissues, organs, and systems maintain the
14 unity of the body, which is a soul body unity, a life
15 body unity.
16 Are you with me there?
17 A. Yes.
18 Q. Okay. And then hold that, hold that thought.
19 And then I want you to go to the next page. Follow up
20 on this doc. In the bottom paragraph of this page --
21 we're now on page three of four. Are you with me?
22 A. The bottom paragraph of page --
23 Q. Yes, starting with: After life.
24 A. -- three of four, yes.
25 Q. Okay.

1 After life is absent from the body, the remains
2 is called a cadaver, a corpse, a dead body. The moment
3 of separation of soul from the body is the moment of
4 true death, and therefore the moment when a human body
5 changes from a living body to a dead body, a corpse, a
6 cadaver. The human cadaver, a corpse, a dead body, is
7 thus changed only because it is no longer part of the
8 life body, soul body, unity of the living person.
9 You wrote that.
10 A. Yes.
11 Q. And you believe that.
12 A. Of course.
13 Q. And that's when death occurs, is when the soul
14 leaves the body.
15 A. Yes.
16 Q. All right. Let's go to, if you will, to
17 Exhibit 5, which is the next one in order. Are you with
18 me?
19 A. Yes.
20 Q. Okay. This, this -- have you ever seen this,
21 this before, the Life Guardian Foundation? Are you
22 familiar with that?
23 A. Yes.
24 Q. All right. The bottom, it says here, very bottom
25 paragraph:

1 Brain death was invented for the sole purpose of
2 organ transplantation, living human medical
3 experimentation, and the means in which measures to
4 sustain life could be legally withdrawn. It was the
5 first legal form of euthanasia in the United States.
6 This deadly code of silence has been broken.
7 Do you see that?
8 A. Yes.
9 Q. And you believe that, don't you?
10 A. Yes.
11 MR. O'MARA: Exhibit 4? I missed it, Bill.
12 Where was that?
13 MR. PETERSON: That's Exhibit --
14 MR. O'MARA: It was Exhibit 5, but where
15 were you reading from?
16 MR. PETERSON: Right here.
17 MR. O'MARA: Oh, okay. That last point?
18 MR. PETERSON: Yeah.
19 MR. O'MARA: Okay. Thank you. Sorry, Your
20 Honor.
21 THE COURT: No problem.
22 BY MR. PETERSON:
23 Q. Now, I'd like you to turn to the, page, on this
24 same Exhibit 5, if you'll go with me, Doctor, to page 3
25 of 11. Do you see that?

1 A. Yes.
2 Q. Are you there? This is part of your American
3 Life League presentation. It's a four-part video
4 instructional series; right?
5 A. Yes.
6 Q. Which you prepared. This page just shows little
7 clips --
8 A. Yes.
9 Q. -- from that, from that video; right?
10 A. Yes.
11 Q. Okay. What I'd like you to do is continue on
12 with me, continue on with me to the next page. It's
13 page 5 of 11. On this same exhibit, page 5 of 11. Are
14 you with me there?
15 A. Yes.
16 Q. On 5 of 11 you, you're quoting Dr. Cicero
17 Coimbra. Do you see that? Or he is quoted, I should
18 say. Dr. Cicero Coimbra.
19 A. You're on -- oh, page 5 of 11.
20 Q. On page 5 of 11.
21 A. Yes. Okay.
22 Q. Are you with me?
23 A. Yes. Sure.
24 Q. Okay. Now, you, you're familiar with Dr. Cicero
25 Coimbra, are you not?

1 A. I am.
2 Q. Okay. As a matter of fact, you, you quoted him
3 in your declaration to this Court; right?
4 A. That's correct.
5 Q. And you provided a letter to this Court signed by
6 him; correct?
7 A. Yes.
8 Q. And you think he's a qualified person and expert
9 in his field, do you not?
10 A. Yes.
11 Q. Okay. Otherwise, you would not have presented
12 his credentials and his letter to this Court; correct?
13 A. Correct.
14 Q. All right. Take a look with me on the second --
15 the third paragraph on this page quoting Dr. Coimbra.
16 Coimbra referred to the so-called apnea test,
17 whereby living patients who cannot breathe on their own
18 have their ventilator removed and are deemed brain dead.
19 If after ten minutes patient do not resume breathing --
20 if after patient, they do not resume breathing. The
21 problem with the test, said Coimbra, is that otherwise
22 treatable patients sustain irreversible brain damage by
23 oxygen deprivation during that ten minutes.
24 Do you see that?
25 A. Yes.

1 Q. Okay. And this, again, is a doctor that you have
2 confidence in, do you not?
3 A. Yes.
4 Q. And you are aware that, that Aden Hailu was, was
5 administered apnea tests on two separate occasions;
6 right?
7 A. I only have record of one.
8 Q. All right.
9 A. So I, I don't know.
10 Q. But in any event, according to Dr. Coimbra, the
11 administration of that test, whether consented to or
12 not, results in irreversible brain damage. Do you
13 believe that?
14 A. Well, I, I don't even see that this is a quote.
15 And the, the, certainly the apnea test does not help a
16 patient, and they retain carbon dioxide, as Aden did,
17 and it gets very high. Like it did, it went over a
18 hundred in Aden, and then she became acidotic. Her pH
19 went down to 7.13. They made her very acidotic. They,
20 they increased her carbon dioxide. And that can only
21 harm her. And it increases the swelling of the brain.
22 So far as oxygen deprivation is concerned, in
23 doing the test -- and they try to prevent oxygen
24 deprivation in order to sell it, if you want to call it
25 that, that they aren't doing any harm. But breathing

1 involves getting oxygen in and carbon dioxide out, and
2 they literally take away the breathing, they suffocate
3 the patient, as they did to Aden. They suffocated her
4 for ten minutes.
5 Q. Yeah.
6 A. And --
7 Q. What happened to Aden is exactly what Dr. Coimbra
8 describes here.
9 A. It is. But whether Dr. Coimbra used these exact
10 words or not, I can't tell you that. It's what's --
11 Q. All right.
12 A. -- written down here.
13 Q. Okay.
14 A. It's not a quotation. I can't tell you where it
15 came from.
16 Q. I know we're running out of time, but I have a
17 lot more. But I do, I'm going to fast forward to, maybe
18 this is going to be the last, maybe not last statement,
19 but the almost last statement. And that is, if you
20 would take a look at another document, that I need to
21 have marked.
22 MR. PETERSON: Can I have it marked, Your
23 Honor, the next document?
24 THE COURT: You may.
25 MR. PETERSON: I'm sorry, I thought I had

1 more copies.
2 MS. PRUPAS: Yeah, we do.
3 THE COURT: Do you have copies for Mr.
4 O'Mara?
5 BY MR. PETERSON:
6 Q. Okay. What I've shown you, Doctor, is, marked as
7 Exhibit 2, is another article. And it looks like one
8 that you also wrote. Do you remember it?
9 A. Yes.
10 Q. In fact, not too long ago. It looks like
11 September of 2014. Quinlan re-examined. Do you see
12 that?
13 A. Yes.
14 Q. Okay. Now, you're familiar with the Quinlan
15 case, are you not?
16 A. Familiar with it, yes.
17 Q. You wrote about it; right?
18 A. Yes.
19 Q. Now, in this article -- if you'll turn with me to
20 page 5 of 10. Are you with me?
21 A. Yes.
22 Q. I'd like to refer to the bottom page of the
23 article that you wrote here, the bottom part, beginning
24 with the line "Karen was brain dead," which is three
25 lines from the bottom.

1 A. Okay.
2 Q. I want to start with the sentence beginning on
3 that line.
4 A. Okay.
5 Q. Although the Court did not find that Karen was
6 brain dead following the stipulation of the parties,
7 nevertheless, it accepted and applied the standard of
8 accepted medical standards -- which you put in quotes.
9 Do you see that?
10 A. Yes.
11 Q. Then you write:
12 This is particularly significant, inasmuch as the
13 Uniform Determination of Death Act, a statute
14 recommended for adoption by every state by the Uniform
15 Law Commissioners, subsequently required the
16 determination of death to be based on, quote, accepted
17 medical standards, end quote.
18 Do you see that?
19 A. Yes.
20 Q. And then you say:
21 Accepted medical standards are not sufficiently
22 stringent for a matter as important as the determination
23 of death.
24 Do you see that?
25 A. Yes.

1 Q. Many people are unaware that accepted medical
2 standards do not preclude the presence of brain
3 functions when a declaration of brain death is made.
4 Are you with me?
5 A. Yes.
6 Q. Okay. So isn't what's going on with respect to
7 your career now, your activity and your philosophy, is
8 that the Uniform Determination of Death Act has made it,
9 by application of the standards, easy, too easy to
10 declare death; is that right?
11 A. I would say that, correct. Yes.
12 Q. All right. You don't agree that, with respect to
13 the determination of death, that accepted medical
14 standards, at least as determined by the act, are
15 applicable -- or should be applied, morally or
16 ethically; right?
17 A. The question is complicated. Can you ask that
18 again?
19 Q. Well, I guess what I want to know is: You're
20 aware, are you not, that Saint Mary's Hospital is taking
21 the position that it has made a determination of death
22 based upon accepted medical standards. You know that's
23 what we're saying; right?
24 A. Yes.
25 Q. All right. And you don't disagree that they've

1 applied accepted medical standards in making that
2 determination, do you?
3 A. Well, I, again, it's, I'm not sure of your
4 question, what you're asking me. What are you --
5 Q. Do you disagree --
6 A. What are you asking me to say or do?
7 Q. It's relatively simple. Do you disagree, yes or
8 no, that Saint Mary's Hospital, in making the
9 determination of death, applied accepted medical
10 standards?
11 A. I'm sorry, sir, you're going to have to make --
12 Q. Do you --
13 A. -- the question simpler.
14 Q. Do you, do you say "yes" or "no" to my statement
15 to this Court, that Saint Mary's Hospital applied
16 accepted medical standards to determine death?
17 A. I --
18 Q. You can agree or disagree.
19 A. I don't know.
20 Q. Okay. Fine.
21 A. I don't know.
22 Q. One last one. I promise it will be the last.
23 I'm going to show you Exhibit 3. And Doctor --
24 MR. O'MARA: What number exhibit is this?
25 MR. PETERSON: It's three.

1 BY MR. PETERSON:
2 Q. Doctor, I'm going to really fast forward this. I
3 have some of the articles that you quoted in your
4 declaration. You're familiar with them, I'm sure.
5 A. Yes.
6 Q. And I have read, I have read them, actually.
7 Would you agree or disagree with me that none of those
8 articles that you've quoted to the Court, none of them,
9 stand for the proposition, either in the abstract or in
10 the conclusion, that there can be any restoration of
11 life, or brain function, after a clinical determination
12 of death has been made under the Uniform Act.
13 A. I, I don't know --
14 Q. All right.
15 A. -- that.
16 Q. Let's take a look at this article that I've shown
17 you.
18 A. Sure.
19 Q. And have you ever seen it before?
20 A. Yes.
21 Q. Okay. It's called -- I probably can't pronounce
22 it -- Morphological and Functional Alterations in the
23 Hypothalamic-Pituitary System in Brain Death with Long
24 Term Bodily Living. Do you see that?
25 A. Yes.

1 Q. Okay. I'd like you to look at the bottom
2 paragraph. I'm going to read it and see what you think
3 about it.
4 LH-RH (luteinizing hormone releasing hormone) was
5 detected in the peripheral plasma of all patients and
6 GRF -- which is growth hormone releasing factor -- was
7 detected in half of the patients for as long as 15 days,
8 but autopsy revealed the fact that the brain tissue,
9 including the hypothalamus, became extensively necrotic
10 after the sixth day of brain death. In order to solve
11 this controversy, it is proposed that these hormones
12 originate from extracranial tissues, such as pancreas.
13 The detection of hypothalamic hormones after the
14 diagnosis of brain death, therefore, is not
15 contradictory to the concept of total brain death.
16 Do you see that?
17 A. Yes.
18 Q. Do you agree, do you agree with that statement?
19 A. I agree that it's there, yes.
20 Q. Do you agree with the truth of the statement?
21 A. I have no way to agree or disagree.
22 MR. PETERSON: All right. No further
23 questions.
24 THE COURT: All right. We'll take a
25 five-minute break.

1 (A short recess was taken at this time.)
2 THE COURT: Okay. Mr. O'Mara?
3 MR. O'MARA: Thank you, Your Honor. I
4 notice that it's almost quarter to 5:00, and I'm not
5 sure we're going to finish this hearing before that.
6 THE COURT: We're not going to finish it
7 before it, but we are going to finish the hearing.
8 MR. O'MARA: Right.
9 THE COURT: Today.
10 MR. O'MARA: But at 5:00 o'clock they may
11 take her off the ventilator.
12 MR. PETERSON: Oh, we're not --
13 THE COURT: I, I don't have the
14 impression --
15 MR. PETERSON: -- going to do that, no.
16 THE COURT: -- that would occur.
17 MR. PETERSON: It's not going to happen.
18 MR. O'MARA: Okay.
19 THE COURT: Thank you. I think that's a
20 fine clarifying point.
21 MR. O'MARA: Thank you, Your Honor.
22
23 REDIRECT EXAMINATION
24 BY MR. O'MARA:
25 Q. Mr., or Dr. Byrne, a lot questions that were

1 asked of you regarding these articles had nothing to do
2 with Aden, did they?
3 A. That's correct.
4 Q. They didn't, none of them, take into
5 consideration her condition as it stands; is that
6 correct?
7 A. Correct.
8 Q. All right. Now, on Exhibit 2, I believe it was,
9 where they talked about the young lady in Oakland, the
10 13-year-old --
11 THE COURT: Just for the record, because
12 it's slightly confusing, Mr. Peterson identified the
13 entire exhibit as Exhibit 1. So there are exhibits
14 within Exhibit 1 that go up to -- what's the last
15 exhibit, 8?
16 THE CLERK: 9.
17 THE COURT: What?
18 THE CLERK: 9.
19 THE COURT: Exhibit 9. So this is
20 Exhibit 1. And if you're referring to Exhibit 2, it
21 would be Exhibit 1 -- Exhibit 2 of Exhibit 1. So
22 unless --
23 MR. O'MARA: That's correct, Your Honor.
24 I'm sorry --
25 THE COURT: It's a mess, really.

1 MR. O'MARA: I didn't catch that. And I'm
2 glad you clarified it for me.
3 THE COURT: We should have just separated
4 them. But they're all in Exhibit 1, and then when we
5 refer to them, that's a subpart of Exhibit 1.
6 MR. O'MARA: Okay.
7 BY MR. O'MARA:
8 Q. First part, the portion that they asked you to
9 read was, the first thing about brain death was that:
10 Brain death is not true death, it never was and
11 never will be.
12 He asked you if you believe that. You said yes?
13 A. Yes.
14 Q. Can you tell us what the basis of that is?
15 A. Well, first of all, whatever brain death is,
16 that, is that, that -- the first article in the United
17 States literature was in 1968, and became known as the
18 Harvard criteria. And, and between 1968 and 1978 there
19 were 30 sets of articles published on the subject, all
20 of them different. And so in the first ten years there
21 was 30 disparate sets of criteria published, and they
22 had a tendency to get less strict as they went along.
23 And there are more sets of criteria published, and to
24 the point where, who knows how many there are, but
25 there's no consensus as to which set. So once "brain

1 death" is used, it certainly means something other than
2 true death.
3 Q. Okay.
4 A. True death is --
5 Q. Let me ask you this --
6 A. -- different from brain death.
7 Q. -- does a ventilator work on a corpse?
8 A. No, it cannot work on a corpse. A ventilator,
9 all a ventilator does is pushes air in. It doesn't even
10 push it out, it pushes air in. And the only way the
11 ventilator is effective is if there's living, healthy
12 lungs, tissues, circulation, and the like, and it only
13 works in someone who's alive. A ventilator will
14 essentially do, do nothing to a corpse. Certainly there
15 cannot be respiration in a corpse.
16 Q. Okay. Is there circulation in Aden?
17 A. Is there circulation? Yes, there is circulation
18 in Aden. And she has a beating heart. Circulation, her
19 heart beats about 100,000 times a day, and it's been
20 beating 100,000 times, about that, right along.
21 Q. And how about respiratory?
22 A. She doesn't breathe on her own, but she has
23 respiration. It's supported by the ventilator. The
24 machine that we use just pushes air in, it doesn't even
25 take it out. And it doesn't do anything for

1 respiration. Respiration can only occur when someone is
2 living.
3 Q. So while it doesn't suck in air --
4 A. No.
5 Q. -- it's able to expel air.
6 A. Yes.
7 Q. Okay. And that's different than what the apnea
8 test shows.
9 A. Yes. The apnea test is something where they take
10 away the ventilator, as they did at least once that I
11 know of in Aden, for ten minutes. And, and during that
12 time they give oxygen, but the carbon dioxide builds up.
13 And carbon dioxide -- in respiration we're always taking
14 in oxygen, blowing out carbon dioxide. And the carbon
15 dioxide builds up. When the carbon dioxide builds up,
16 that makes the brain swell. And it also is associated
17 with acidosis. And most everybody knows that acidosis
18 is a bad thing for the body to have. And they did it to
19 Aden, and they do it with the apnea test. And that is
20 not a good thing to do to a patient. No one should ever
21 get an apnea test.
22 Q. Okay. What about the ventilator, is that used
23 for, just basically to preserve the life?
24 A. Well, a ventilator is a method of treating
25 patients, and, and the ventilators are life protecting

1 life preserving, and very good things to do for
2 patients. And it's been helping Aden to live for
3 several months now.
4 Q. Okay. Now, there was some talk about the use of
5 organs, the taking of organs. You understand what I'm
6 talking about?
7 A. Yes. In Aden, you mean, or anyone?
8 Q. No, just in general now.
9 A. Yes.
10 Q. Especially with regard to the articles that Mr.
11 Peterson just asked you about.
12 A. Sure.
13 Q. Okay. Now, where did you obtain the statistics
14 regarding the fact that they use that for the harvesting
15 of organs? Was that in the Harvard study?
16 A. Yes, it was in the Harvard study. They, they --
17 it was called a definition of irreversible comma,
18 published in 1968. That's the, the report of the
19 Harvard committee. And their number one reason for
20 having this new way of declaration of, of irreversible
21 coma, as they called it, was so that when patients were
22 resuscitated but, but they are not, they do not get to
23 be as good as they'd like, then what happens is that
24 they become a burden, and they occupy hospital beds.
25 And so the number one reason was so that they, they

1 could turn off the ventilator so that they would die.
2 And then the number two reason was to get organs.
3 And they had to have this new way, or else it would, as
4 they say, would, would cause difficulty in obtaining
5 organs. And that was the reason that this new method
6 of, of declaration of death was invented.
7 Q. On Exhibit 1 -- B or 2? Exhibit, it's listed as
8 Exhibit 2 --
9 A. Okay.
10 Q. -- with the big papers, but it's basically
11 Exhibit 1, and then Exhibit 2.
12 A. Okay.
13 Q. At the back of that are incidents just in the
14 past five years. And this article was written in 2013.
15 Are these things, or areas of people surviving after
16 they've been called brain dead?
17 A. Yes.
18 Q. There appear to be nine; is that right?
19 A. There's nine of them.
20 Q. That are just listed here.
21 A. Yes. Right.
22 Q. Okay. Now, you went into the so-called brain
23 dead, or cardiac -- excuse me. On page 2 of 10, which
24 is Exhibit 1-3, he asked you about the quotation. Do
25 you see that?

1 A. I, I have Exhibit 3. And, and it's page 2 of 10.
2 For whatever reason, I don't have 2 of 10. I have 1 of
3 10. Oh, here it is. Okay. I have it. Yes.
4 Q. Okay. Now, this was not written by you, was it?
5 A. Well, certainly the article was not written by
6 me, and this quotation --
7 Q. Do you know -- well, let's start with this: Do
8 you know where this quotation was taken from?
9 A. No.
10 Q. Do you know whether or not it was accurately
11 portrayed in the manner in which you said it when it was
12 given?
13 A. I, I can't tell you the, I don't -- there's no
14 reference there.
15 Q. Okay.
16 A. I usually don't use words like "donor pool." I,
17 I don't know. I usually don't use words like that,
18 but --
19 Q. Okay. Now, on Exhibit 1-4, on page three, this
20 was an article written by you.
21 A. About -- yes. I think so, yes. Page 3 of 4?
22 Q. Yes.
23 A. Okay. Got it.
24 Q. Yes. And in that quote it talks about the soul.
25 Do you see that?

1 A. Yes.
2 Q. Are you indicating in this article that the
3 question of life or death is to be determined by the
4 person's religion?
5 A. No.
6 Q. On Exhibit 3, which in the exact Exhibit 3, not
7 1-3, but Exhibit 3, LH and RH, do you see that article?
8 A. Oh, I've got to go backwards.
9 Q. It's the second one, second paragraph under
10 Summary.
11 A. On the second paragraph of the first page. Okay.
12 Q. Yes.
13 A. Yes.
14 Q. Could you read that to yourself for a moment?
15 A. I'm not sure I have the right article.
16 MR. O'MARA: May I --
17 THE WITNESS: Sorry.
18 MR. O'MARA: -- approach the witness, Your
19 Honor?
20 THE COURT: You may.
21 THE WITNESS: Is it Exhibit 3?
22 BY MR. O'MARA:
23 Q. Yeah. No, it's not, it's a different 3.
24 A. Oh. That's 4.
25 Q. It's not marked with these, it's a separate

1 exhibit. Can I just --
2 A. Yup.
3 Q. -- take a look at this?
4 A. Sure can, yes. I had one more there, too. He
5 didn't use these.
6 Q. Oh. That's right. Yeah, this is it right here.
7 A. Okay. Oh, yeah. Yes.
8 Q. Can you please explain what that means?
9 A. The, the paragraph: LR-HR --
10 Q. Yes.
11 A. -- luteinizing was detected in the peripheral
12 plasma of all patients --
13 Q. Don't read it. Don't read it. Just read it to
14 yourself for a minute.
15 A. Okay.
16 Q. And then explain it.
17 Have you read it?
18 A. Yes.
19 Q. Okay. What does the pancreas got to do with the
20 issues that we are talking about here and Aden?
21 A. Well, it has nothing to do with Aden, and, and so
22 far as the mention of the pancreas, it says -- and
23 they're talking about luteinizing hormone and growth
24 hormone, neither of which have been measured in Aden,
25 and, and so it's there.

heart and other vital organs suitable for transplantation. Vital organs must be taken from a living body; removing vital organs will cause death.

Editor: I still recall the announcement of the first official heart transplant by Dr. Christian Barnard in Cape Town, South Africa in 1967. How was it possible for surgeons to overcome the obvious legal, moral and ethical obstacles of harvesting vital organs for transplant from a living human being?

Dr. Byrne: By declaring "brain death" as death.

Editor: You mean by replacing the traditional criteria for declaring death with a new criterion known as "brain death"?

Dr. Byrne: Yes. In 1968, an ad hoc committee was formed at Harvard University in Boston for the purpose of redefining death so that vital organs could be taken from persons declared "brain dead," but who in fact, were not dead. Note that "brain death" did not originate or develop by way of application of the scientific method. The Harvard Committee did not determine if irreversible coma was an appropriate criterion for death. Rather, its mission was to see that it was established as a new criterion for death. In short, the report was made to fit the already arrived at conclusions.

Editor: Does this mean that a person who is in a cerebral coma or needs a ventilator to support breathing could be declared "brain dead"?

Dr. Byrne: Yes.

Editor: Even if his heart is pumping and the lungs are oxygenating blood?

Dr. Byrne: Yes. You see, vital organs need to be fresh and undamaged for transplantation. For example, once breathing and circulation ceases, in five minutes or less, the heart is so damaged that it is not suitable for transplantation. The sense of urgency is real. After all, who would want to receive a damaged heart?

Editor: Did the Harvard criterion of "brain death" lead to changes in state and federal laws?

Dr. Byrne: Indeed. Between 1968 and 1978, more than thirty different sets of criteria for "brain death" were adopted in the United States and elsewhere. Many more have been published since then. This means that a person can be declared "brain dead" by one set of criteria, but alive by another or perhaps all the others. Every set includes the apnea test. This involves taking the ventilator away for up to ten minutes to observe if the patient can demonstrate that he/she can breathe on his/her own. The patient always gets worse with this test. Seldom, if ever, is the patient or the relatives informed ahead of time what will happen during the test. If the patient does not breathe on his/her own, this becomes the signal not to stop the ventilator, but to continue the ventilator until the recipient/s is, or are, ready to receive the organs. After the organs are excised, the "donor" is truly dead.

Editor: What about the Uniform Determination of Death Act (UDDA)?

Dr. Byrne: According to the UDDA, death may be declared when a person has sustained either "irreversible cessation of circulatory and respiratory functions" or "irreversible cessation of all functions of the entire brain, including the brain stem." Since then, all 50 states consider cessation of brain functioning as death.

Editor: How does the body of a truly dead person compare with the body of a person declared "brain dead"?

Dr. Byrne: The body of a truly dead person is characterized in terms of dissolution, destruction, disintegration and putrefaction. There is an absence of vital body functions and the destruction of the organs of the vital systems. As I have already noted, the dead body is cold, stiff and unresponsive to all stimuli.

Editor: What about the body of a human being declared to be "brain dead"?

Dr. Byrne: In this case, the body is warm and flexible. There is a beating heart, normal color, temperature, and blood pressure. Most functions continue, including digestion, excretion, and maintenance of fluid balance with normal urine output. There will often be a response to surgical incisions. Given a long enough period of observation, someone declared "brain dead" will show healing and growth, and will go through puberty if they are a child.

Editor: Dr. Byrne, you mentioned that "brain dead" people will often respond to surgical incisions. Is this referred to as "the Lazarus effect?"

Dr. Byrne: Yes. That is why during the excision of vital organs, doctors find the need to use anesthesia and paralyzing drugs to control muscle spasms, blood pressure and heart rate changes, and other bodily protective mechanisms common in living patients. In normal medical practice, a patient's reaction to a surgical incision will indicate to the anesthesiologist that the anesthetic is too light. This increase in heart rate and blood pressure are reactions to pain. Anesthetics are used to take away pain. Anesthesiologists in Great Britain require the administration of anesthetic to take organs. A corpse does not feel pain.

Editor: I know that there have been instances where young pregnant women have sustained serious head injuries, declared "brain dead," and have given birth to a live child.

Dr. Byrne: That is true. With careful management, these "brain dead" women have delivered a live baby. In the longest recorded instance, the child was carried for 107 days before delivery.

Editor: Are there other uses for "brain dead" patients besides being the source of fresh vital organs?

Dr. Byrne: Legally, "brain dead" patients are considered corpses or cadavers, and are called such by organ retrieval networks. These "corpses" can be used for teaching purposes and to try out new medical procedures. Yet these same "corpses" are carrying unborn children to successful delivery. Certainly this is extraordinary behavior by a "cadaver!"

Editor: What if a potential organ donor does not meet the criteria for "brain death," but has sustained certain injuries or has an illness suggesting that death will soon occur?

Dr. Byrne: Such cases have brought about the development of a what is called "non heart-beating donation" (NHBD), more recently labeled "donation by cardiac death" (DCD)–in which treatments considered extraordinary means, such as mechanical ventilation, are discontinued and cause the patient to become pulseless. As soon as circulation stops, death is declared.

Editor: Then what?

Dr. Byrne: This stopping of life supporting treatments is done in the operating room. After a few minutes–the time varies in different institutions–procedures to take vital organs begins.

Editor: But how can this be accomplished if the person declared to be dead, is truly dead?

Dr. Byrne: It can't.

Editor: What about insurance coverage for "brain dead" patients?

Dr. Byrne: Hospitals allow them to occupy a bed and insurance companies cover expenses as they do for other living patients. If the patients' organs are suitable for transplantation, any transfer of the patients to another hospital is covered by insurance. Insurance also covers the cost of life support, blood transfusions, antibiotics and other medications needed to maintain organs in a healthy state. This also applies to "brain dead" patients to be used in medical teaching facilities.

Editor: I know that the federal government has taken an active role in promoting so-called "living wills." Has it also played a role in promoting vital organ donations?

Dr. Byrne: The federal government has, for reasons that are unclear, been deeply involved in promoting vital organ transplantation. For example, a federal mandate issued in 1998 states that physicians, nurses, chaplains, and other health care workers may not speak to a family of a potential organ donor without first obtaining approval from the regional organ retrieval system. If the potential for transplantation exists, a trained "designated requester" visits with the family of the patient first, including families that adamantly oppose organ donation. If someone at the hospital speaks to the family of the patient first, the hospital risks losing its accreditation and possibly federal funding.

Editor: Why the "designated requester"?

Dr. Byrne: That's because studies show that these specialists have a greater success obtaining permission for organ donations from grieving family members. They are trained to "sell" the concept of organ donation, using emotionally-laden phrases such as "giving the gift of life," "your loved one's heart will live on in someone else," and other similar platitudes, all empty of true meaning. Don't forget that the donation and transplant industry is a multi- billion dollar enterprise. In 1996, Forbes Magazine ran an informative series on this issue, but as a rule it is difficult, if not impossible, to obtain solid financial data. One thing, however, is clear: donor families do not receive any monetary benefit from their "gift of life."

Editor: There appears to be a strong utilitarian aspect to vital organ transplantation.

Dr. Byrne: That is because the philosophy that inspires the practice is based on the error that man is an end to himself, and the sole maker with supreme control of his own destiny. Slavery bought, sold and treated enslaved persons as chattel. The human transplantation industry and the "bioethics" groups that promote vital organ transplantation also consider human beings to be chattel, that is, they can be used as a source of organs for transplantation. This utilitarian ethic should be rejected. "Brain death" and all forms of imposed death are contrary to the Natural Moral Order and against God's Ordinance "Thou shall not kill."

Editor: It is obvious that organ donation is a very serious matter – literally a matter of life and death for the potential donor and the family of a potential donor, and that everyone ought to be implicitly and explicitly informed about the true nature of so-called "brain death" and vital organ transplantation.

Would you review for our readers some of the questions they should ask themselves before signing an organ donor card or giving permission for a loved one to be declared "brain dead" in anticipation of organ transplantation?

Dr. Byrne: If there is any question in the mind of your readers as to the fact that "brain death" is not true death, perhaps they may want to ask themselves the following questions regarding "brain death" and vital organ transplantation:

- **Why can health insurance cover intensive care costs on "bread dead" patients?**
- **Why do "brain dead" patients often receive intravenous fluids, antibiotics, ventilator care, and other life support measures?**
- **Is it right and just for physicians and "designated requesters" to tell families that their "bread-dead" loved one is dead when she or he is not dead?**
- **How can "brain dead" patients have normal body functions, including vital signs, if they are really dead?**
- **How can a "brain-dead" pregnant mother deliver a normal, healthy infant?**
- **Why does a ventilator work on someone declared "brain dead," but not on a corpse?**

· **Why is it wrong to carry out the burial or cremation of a "brain-dead" person?**

· **Are persons who have been declared "brain dead" truly dead?**

· **If "brain-dead" persons are not truly dead, are they alive?**

Editor: Thank you on behalf of The Michael Fund for providing this valuable information to our readership?

Dr. Byrne: Thank you for this opportunity to inform your readers about this vital issue of vital organ transplantation. If they don't remember every thing that I have said, I hope that they will remember this one point: "brain death" is not true death. Instead of signing a donor organ card, I would encourage everyone to obtain a Life Support Directive. A free copy of this document is available from Citizens

United Resisting Euthanasia at: cureltd@verizon.net or write C.U.R.E, 303 Truman Street, Berkeley Springs, WV 25411.

Dr. Paul A. Byrne is a neonatologist and a Clinical Professor of Pediatrics. He is a member of the Fellowship of Catholic Scholars and past-President of the Catholic Medical Association. He is the producer of the film Continuum of Life and the author of Life, Life Support and Death, Beyond Brain Death, and Brain Death is Not Death. Dr. Byrne has presented testimony on life-death issues to eight state legislatures beginning in 1967. He opposed Dr. Jack Kevorkian on the television program *Crossfire*. and has appeared on *Good Morning America* and the British Broadcasting Corporation (BBC). The International Foundation for Genetic Research, popularly known as The Michael Fund, is a U.S.-based pro-life genetic research agency specializing in Down syndrome research. Please visit us at www.michaelfund.org.

Sermon by the Bishop of Munster, Clemens August Count von Galen, on Sunday 3rd August 1941 in St. Lambert's Church, Munster

To my regret I have to inform you that during the past week the Gestapo has continued its campaign of annihilation against the Catholic orders On Wednesday 30th July they occupied the administrative centre of the province of the Sisters of Our Lade in Muhlhausen (Kentpen district). which formerly belonged to the diocese of Munster and declared the convent to be dissolved. Most of the nuns many of whom come from our diocese, were evicted and required to leave the district that very day. On Thursday 31st July. according to reliable accounts, the monastery of the missionary brothers of Hiltrup in Hamm was also occupied and confiscated by the Gestapo and the monks were evicted

Already on 13th July, referring to the expulsion of the Jesuits and the missionary sisters of St Clare from Munster, did I publicly make the following statement in this same church: none of the occupants of these convents is accused of any offence or crime, none has been brought before a court, none has been found guilty. I hear that rumours are now being spread in Munster that after all these religious, in particular the Jesuits, have been accused, or even convicted, of criminal offences, and indeed of treason. I declare: These are base slanders of German citizens, our brothers and sisters, which we will not tolerate I have already lodged a criminal charge with the Chief Prosecutor against a fellow who went so far as to make such allegations in front of witnesses.
I express the expectation that the man will be brought swiftly to account and that our courts of justice still have the courage to punish slanderers who seek to destroy the honour of innocent German citizens whose property has already been taken from them. I call on all my listeners, indeed on all decent fellow-citizens, who in future hear accusations made against the religious expelled from Munster to get the name and address of the person making the accusations and of any witnesses.

I hope that there are still men in Munster who have the courage to play their part in securing the judicial examination of such accusations. which poison the national community of our people coming forward with their person, their name and if necessary their oath I ask them. if such accusations against the religious are made in their presence, to report them at once to their parish priest or to the Episcopal

Vicariate-General and have them recorded. I owe it to the honour of our religious orders, the honour of our Catholic Church and also the honour of our German people and our city of Munster to report such cases to the state prosecution service so that the facts may be established by a court and base slanderers of our religious punished.

(After the Gospel reading for the 9th Sunday after Pentecost: "And when He was come near, He beheld the city, and wept over it . . .", Luke 19.41-47).

My dear diocesans!

It is a deeply moving event that we read of in the Gospel for today. Jesus weeps! The Son of God weeps! A man who weeps is suffering pain â€" pain either of the body or of the heart. Jesus did not suffer in the body; and yet he wept. How great must have been the sorrow of soul, the heartfelt pain of this most courageous of men to make him weep! Why did he weep? He wept for Jerusalem, for God's holy city that was so dear to him, the capital of his people. He wept for its inhabitants, his fellow-countrymen, because they refused to recognise the only thing that could avert the judgment foreseen by his omniscience and determined in advance by his divine justice: "If thou hadst known . . . the things which belong unto thy peace!" Why do the inhabitants of Jerusalem not know it? Not long before Jesus had given voice to it: "O Jerusalem, Jerusalem . . . how often would I have gathered thy children together, as a hen doth gather her brood under her wings, and ye would not!" (Luke 13,34).

Ye would not. I, your King, your God, I would. But ye would not! How safe, how sheltered is the chicken under the hen's wing: she warms it, she feeds it, she defends it. In the same way I desired to protect you, to keep you, to defend you against any ill. I would, but ye would not!

That is why Jesus weeps: that is why that strong man weeps; that is why God weeps. For the folly, the injustice, the crime of not being willing . And for the evil to which that gives rise â€" which his omniscience sees coming. which his justice must impose â€" if man sets his unwillingness against God's commands, in opposition to the admonitions of conscience, and all the loving invitations of the divine Friend, the best of Fathers: "If thou hadst known, in this thy day, the things which belong unto thy peace! But then wouldst not!.: It is something terrible, something incredibly wrong and fatal. when man sets his will against God's will. I would) than wouldst not! It is therefore that Jesus weeps for Jerusalem.

Dearly beloved Christians! The joint pastoral letter of the German bishops, which was read in all Catholic churches in Germany on 26 June 1941, includes the following words.

"It is true that in Catholic ethics there are certain positive commandments which cease to be obligatory if their observance would be attended by unduly great difficulties; but there are also sacred obligations of conscience from which no one can release us; which we must carry out even if it should cost us our life. Never, under any circumstances, may a man, save in war or in legitimate self-defence, kill an innocent person."

I had occasion on 6th July to add the followings comments on this passage in the joint pastoral letter:

"For some months we have been heating reports that inmates of establishments for the care of the mentally ill who have been ill for a long period and perhaps appear incurable have been forcibly removed from these establishments on orders from Berlin. Regularly the relatives receive soon afterwards an intimation that the patient is dead, that the patient's body has been cremated and that they can collect the ashes. There is a general suspicion, verging on certainty. that these numerous unexpected deaths of the mentally ill do not occur naturally but are intentionally brought about in accordance with the doctrine that it is legitimate to destroy a so-called "worthless life" â€" in other words to kill innocent men and women, if it is thought that their lives are of no further value to the people and the state. A terrible doctrine which seeks to justify the murder of innocent people, which legitimises the violent killing of disabled persons who are no longer capable of work, of cripples, the incurably ill and the aged and infirm!"

I am reliably informed that in hospitals and homes in the province of Westphalia lists are being prepared of inmates who are classified as "unproductive members of the national community" and are to be

removed from these establishments and shortly thereafter killed. The first party of patients left the mental hospital at Marienthal, near Munster, in the course of this week.Â

German men and women! Article 211 of the German Penal Code is still in force, in these terms: "Whoever kills a man of deliberate intent is guilty of murder and punishable with death". No doubt in order to protect those who kill with intent these poor men and women, members of our families, from this punishment laid down by law, the patients who have been selected for killing are removed from their home area to some distant place. Some illness or other is then given as the cause of death. Since the body is immediately cremated, the relatives and the criminal police are unable to establish whether the patient had in fact been ill or what the cause of death actually was. I have been assured, however, that in the Ministry of the Interior and the office of the Chief Medical Officer, Dr Conti, no secret is made of the fact that indeed a large number of mentally ill persons in Germany have already been killed with intent and that this will continue.

Article 139 of the Penal Code provides that "anyone who has knowledge of an intention to commit a crime against the life of any person . . . and fails to inform the authorities or the person whose life is threatened in due time . . . commits a punishable offence". When I learned of the intention to remove patients from Marienthal I reported the matter on 28th July to the State Prosecutor of Munster Provincial Court and to the Munster chief of police by registered letter, in the following terms:

"According to information I have received it is planned in the course of this week (the date has been mentioned as 31st July) to move a large number of inmates of the provincial hospital at Marienthal, classified as 'unproductive members of the national community', to the mental hospital at Eichberg, where, as is generally believed to have happened in the case of patients removed from other establishments, they are to be killed with intent. Since such action is not only contrary to the divine and the natural moral law but under article 211 of the German Penal Code ranks as murder and attracts the death penalty, I hereby report the matter in accordance with my obligation under article 139 of the Penal Code and request that steps should at once be taken to protect the patients concerned by proceedings against the authorities planning their removal and murder, and that I may be informed of the action taken".

I have received no information of any action by the State Prosecutor or the police.

I had already written on 26th July to the Westphalian provincial authorities, who are responsible for the running of the mental hospital and for the patients entrusted to them for care and for cure, protesting in the strongest terms. It had no effect. The first transport of the innocent victims under sentence of death has left Marienthal. And I am now told that 800 patients have already been removed from the hospital at Warstein.

We must expect, therefore, that the poor defenceless patients are, sooner or later, going to be killed. Why? Not because they have committed any offence justifying their death, not because, for example, they have attacked a nurse or attendant, who would be entitled in legitimate selfÂdefence to meet violence with violence. In such a case the use of violence leading to death is permitted and may be called for, as it is in the case of killing an armed enemy.

No: these unfortunate patients are to die, not for some such reason as this but because in the judgment of some official body, on the decision of some committee, they have become "unworthy to live," because they are classed as "unproductive members of the national community".

The judgment is that they can no longer produce any goods: they are like an old piece of machinery which no longer works, like an old horse which has become incurably lame, like a cow which no longer gives any milk. What happens to an old piece of machinery? It is thrown on the scrap heap. What happens to a lame horse, an unproductive cow?

I will not pursue the comparison to the end--so fearful is its appropriateness and its illuminating power.

But we are not here concerned with pieces of machinery; we are not dealing with horses and cows, whose sole function is to serve mankind, to produce goods for mankind. They may be broken up; they may be slaughtered when they no longer perform this function.

No: We are concerned with men and women, our fellow creatures, our brothers and sisters! Poor human beings, ill human beings, they are unproductive, if you will. But does that mean that they have lost the right to live? Have you, have I, the right to live only so long as we are productive, so long as we are recognised by others as productive?

If the principle that men is entitled to kill his unproductive fellow-man is established and applied, then woe betide all of us when we become aged and infirm! If it is legitimate to kill unproductive members of the community, woe betide the disabled who have sacrificed their health or their limbs in the productive process! If unproductive men and women can be disposed of by violent means, woe betide our brave soldiers who return home with major disabilities as cripples, as invalids! If it is once admitted that men have the right to kill "unproductive" fellow-men â€" even though it is at present applied only to poor and defenceless mentally ill patients â€" then the way is open for the murder of all unproductive men and women: the incurably ill, the handicapped who are unable to work, those disabled in industry or war. The way is open, indeed, for the murder of all of us when we become old and infirm and therefore unproductive. Then it will require only a secret order to be issued that the procedure which has been tried and tested with the mentally ill should be extended to other "unproductive" persons, that it should also be applied to those suffering from incurable tuberculosis, the aged and infirm, persons disabled in industry, soldiers with disabling injuries!

Then no man will be safe: some committee or other will be able to put him on the list of "unproductive" persons, who in their judgment have become "unworthy to live". And there will be no police to protect him, no court to avenge his murder and bring his murderers to justice.

Who could then have any confidence in a doctor? He might report a patient as unproductive and then be given instructions to kill him! It does not bear thinking of, the moral depravity, the universal mistrust which will spread even in the bosom of the family, if this terrible doctrine is tolerated, accepted and put into practice. Woe betide mankind, woe betide our German people, if the divine commandment, "Thou shalt not kill", which the Lord proclaimed on Sinai amid thunder and lightning, which God our Creator wrote into man's conscience from the beginning, if this commandment is not merely violated but the violation is tolerated and remains unpunished!

I will give you an example of what is happening. One of the patients in Marienthal was a man of 55, a farmer from a country parish in the MÃ¼nster region â€" I could give you his name â€" who has suffered for some years from mental disturbance and was therefore admitted to Marienthal hospital. He was not mentally ill in the full sense: he could receive visits and was always happy, when his relatives came to see him. Only a fortnight ago he was visited by his wife and one of his sons, a soldier on home leave from the front. The son is much attached to his father, and the parting was a sad one: no one can tell, whether the soldier will return and see his father again, since he may fall in battle for his country. The son, the soldier, will certainly never again see his father on earth, for he has since then been put on the list of the "unproductive". A relative, who wanted to visit the father this week in Marienthal, was turned away with the information that the patient had been transferred elsewhere on the instructions of the Council of State for National Defence. No information could be given about where he had been sent, but the relatives would be informed within a few days. What information will they be given? The same as in other cases of the kind? That the man has died, that his body has been cremated, that the ashes will be handed over on payment of a fee? Then the soldier, risking his life in the field for his fellow-countrymen, will not see his father again on earth, because fellow-countrymen at home have killed him.

The facts I have stated are firmly established. I can give the names of the patient, his wife and his son the soldier, and the place where they live.

"Thou shalt not kill!" God wrote this commandment in the conscience of man long before any penal code laid down the penalty for murder, long before there was any prosecutor or any court to investigate and avenge a murder. Cain, who killed his brother Abel, was a murderer long before there were any

states or any courts of law. And he confessed his deed, driven by his accusing conscience: "My punishment is greater than I can bear . . . and it shall come to pass, that every one that findeth me the murderer shall slay me" (Genesis 4,13-14).

"Thou shalt not kill!" This commandment from God, who alone has power to decide on life or death, was written in the hearts of men from the beginning, long before God gave the children of Israel on Mount Sinai his moral code in those lapidary sentences inscribed on stone which are recorded for us in Holy Scripture and which as children we learned by heart in the catechism.

"I am the Lord thy God!" Thus begins this immutable law. "Thou shalt have not other gods before me." God â€" the only God, transcendent, almighty, omniscient, infinitely holy and just, our Creator and future Judge--has given us these commandments. Out of love for us he wrote these commandments in our heart and proclaimed them to us. For they meet the need of our God-created nature; they are the indispensable norms for all rational, godly, redeeming and holy individual and community life. With these commandments God, our Father, seeks to gather us, His children, as the hen gathers her chickens under her wings. If we follow these commands, these invitations, this call from God, then we shall be guarded and protected and preserved from harm, defended against threatening death and destruction like the chickens under the hen's wings.

"O Jerusalem, Jerusalem . . . how often would I have gathered thy children together, even as a hen gathereth her chickens under her wings, and ye would not!" Is this to come about again in our country of Germany, in our province of Westphalia, in our city of Munster? How far are the divine commandments now obeyed in Germany, how far are they obeyed here in our community?

The eighth commandment: "Thou shalt not bear false witness, thou shalt not lie." How often is it shamelessly and publicly broken!

The seventh commandment: "Thou shalt not steal". Whose possessions are now secure since the arbitrary and ruthless confiscation of the property of our brothers and sisters, members of Catholic orders? Whose property is protected, if this illegally confiscated property is not returned?

The sixth commandment: "Thou shalt not commit adultery." Think of the instructions and assurances on free sexual intercourse and unmarried motherhood in the notorious Open Letter by Rudolf Hess, who has disappeared since, which was published in all the newspapers. And how much shameless and disreputable conduct of this kind do we read about and observe and experience in our city of Munster! To what shamelessness in dress have our young people been forced to get accustomed to â€" the preparation for future adultery! For modesty, the bulwark of chastity, is about to be destroyed.

And now the fifth commandment: "Thou shalt not kill", is set aside and broken under the eyes of the authorities whose function it should be to protect the rule of law and human life, when men presume to kill innocent fellow-men with intent merely because they are "unproductive", because they can no longer produce any goods.

And how do matters stand with the observance of the fourth commandment, which enjoins us to honour and obey our parents and those in authority over us? The status and authority of parents is already much undermined and is increasingly shaken by all the obligations imposed on children against the will of their parents. Can anyone believe that sincere respect and conscientious obedience to the state authorities can be maintained when men continue to violate the commandments of the supreme authority, the Commandments of God, when they even combat and seek to stamp out faith in the only true transcendent God, the Lord of heaven and earth?

The observance of the first three commandments has in reality for many years been largely suspended among the public in Germany and in MÃ¼nster. By how many people are Sundays and feast days profaned and withheld from the service of God! How the name of God is abused, dishonoured and blasphemed!

And the first commandment: "Thou shalt have no other gods before me." In place of the only true eternal God men set up their own idols at will and worship them: Nature, or the state, or the people, or the race.

And how many are there whose God, in Paul's word, "is their belly" (Philippians 3:19) â€" their own well â€" being, to which they sacrifice all else, even honour and conscience â€" the pleasures of the senses, the lust for money, the lust for power! In accordance with all this men may indeed seek to arrogate to themselves divine attributes, to make themselves lords over the life and death of their fellow-men.

When Jesus came near to Jerusalem and beheld the city he wept over it, saying: "If thou hadst known, even thou, at least in this thy day, the things which belong unto thy peace! but now they are hid from thine eyes. For the day shall come upon thee, that thine enemies . . . shall lay thee even with the ground, and thy children within thee; and they shall not leave in thee one stone upon another; because thou knewest not the time of thy visitation." Looking with his bodily eyes, Jesus saw only the walls and towers of the city of Jerusalem, but the divine omniscience looked deeper and saw how matters stood within the city and its inhabitants: "O Jerusalem, Jerusalem . . . how often would I have gathered thy children together, as a hen doth gather her brood under her wings â€" and ye would not!" That is the great sorrow that oppresses Jesus's heart, that brings tears to his eyes. I wanted to act for your good, but ye would not!

Jesus saw how sinful, how terrible, how criminal, how disastrous this unwillingness is. Little man, that frail creature, sets his created will against the will of God! Jerusalem and its inhabitants, His chosen and favoured people, set their will against God's will! Foolishly and criminally, they defy the will of God! And so Jesus weeps over the heinous sin and the inevitable punishment. God is not mocked!

Christians of Munster! Did the Son of God in his omniscience in that day see only Jerusalem and its people? Did he weep only over Jerusalem? Is the people of Israel the only people whom God has encompassed and protected with a father's care and mother's love, has drawn to Himself? Is it the only people that would not ? The only one that rejected God's truth, that threw off God's law and so condemned itself to ruin?

Did Jesus, the omniscient God, also see in that day our German people, our land of Westphalia, our region of Munster, the Lower Rhineland? Did he also weep over us? Over Munster?

For a thousand years he has instructed our forefathers and us in his truth, guided us with his law, nourished us with his grace, gathered us together as the hen gathers her chickens under her wings. Did the omniscient Son of God see in that day that in our time he must also pronounce this judgment on us: "Ye would not: see, your house will be laid waste!" How terrible that would be!

My Christians! I hope there is still time; but then indeed it is high time: That we may realise, in this our day, the things that belong unto our peace! That we may realise what alone can save us, can preserve us from the divine judgment: that we should take, without reservation, the divine commandments as the guiding rule of our lives and act in sober earnest according to the words: "Rather die than sin".

That in prayer and sincere penitence we should beg that God's forgiveness and mercy may descend upon us, upon our city, our country and our beloved German people.

But with those who continue to provoke God's judgment, who blaspheme our faith, who scorn God's commandments, who make common cause with those who alienate our young people from Christianity, who rob and banish our religious, who bring about the death of innocent men and women, our brothers and sisters â€" with all those we will avoid any confidential relationship, we will keep ourselves and our families out of reach of their influence, lest we become infected with their godless ways of thinking and acting, lest we become partakers in their guilt and thus liable to the judgment which a just God must and will inflict on all those who, like the ungrateful city of Jerusalem, do not will what God wills.

O God, make us all know, in this our day, before it is too late, the things which belong to our peace!

O most Sacred Heart of Jesus, grieved to tears at the blindness and iniquities of men, help us through Thy grace, that we may always strive after that which is pleasing to Thee and renounce that which displeases Thee, that we may remain in Thy love and find peace for our souls!
Amen.

Viva Cristo Rey!

Our Lady of Guadalupe, pray for us.

Our Lady of Loreto, pray for us.

Saint Joseph, pray for us.

Saints Peter and Paul, pray for us.

Saint John the Baptist, pray for us.

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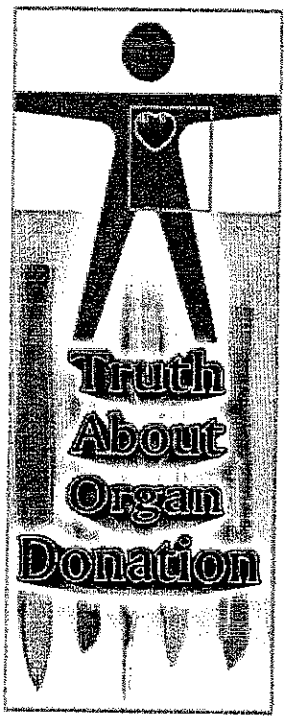
EXHIBIT 9

EXHIBIT 9



Dr. Paul A. Byrne is a neonatologist and a Clinical Professor of Pediatrics. He is past President of the Catholic Medical Association. He is the producer of the film Continuum of Life and the author of Life, Life Support and Death, Beyond Brain Death, and Brain Death is Not Death. Dr. Byrne has presented testimony on life-death issues to nine state legislatures beginning in 1967. He opposed Dr. Jack Kevorkian on Cross-Fire, and has appeared on Good Morning America, the British Broadcasting Corporation (BBC) documentary, "Are the donors really dead?", and public Television in Japan. He is the author of many articles in medical and law journals and the lay press.

Paul was married to Shirley for forty-eight years until she entered her eternal reward on Christmas 2005. They are the proud parents of twelve children and grandparents of twenty-six grandchildren.

Dr. Byrne and his colleagues recently held a conference at the Vatican on this very subject. Video DVDs of the conference are available by mailing a request to the International Foundation for Genetic Research. See address below.

Dr. Byrne spends many spare waking moments in defense of those unable to communicate on their own behalf. He is available for speaking engagements and radio and television interviews at a very minimal, or donations only, cost to audiences and organizations around the country. This is a topic that the general public must continuously be made aware of before it happens to them.

To make arrangements for an interview with Dr. Byrne or to have him as a speaker at your event please send a request by using the contact button at the top right corner of this page. Thank you.

Watch this impressive youtube introduction of Dr. Byrne

Want to know more? Several articles by Dr. Byrne and his colleagues are available online at:

Life Guardian Foundation
Website: www.thelifeguardian.org

American Life League
Website: www.all.org

Renew America
Website: www.renewamerica.com

The International Foundation
for Genetic Research
Website: www.michaelfund.org

The International Foundation for Genetic Research, popularly known as The Michael Fund, is a U.S. based pro-life genetic research agency specializing in Down Syndrome research.

ARTICLES

Facts about being an organ donor.

Do your organs belong to the government?

Catholic teaching on death and organ transplantation.

Make an informed decision.

Why are Pastoral Care Workers ignorant of the realities of "brain death"?

Additional articles by Dr. Byrne

LINKS

BRAIN DEATH IS NOT DEATH COLLEGIAL ESSAY

AN AUDIO INTERVIEW WITH DR. PAUL BYRNE

New England Journal of Medicine: 'Brain Death' is not Death - Organ Donors are Alive

Did Hospital Kill Teen For His Organs

Should I be an organ donor American Life League

DON'T GIVE YOUR HEART AWAY

Life Site News

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3860
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Attorneys for Prime Healthcare Services, LLC, dba St. Mary's Regional Medical Center

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF THE GUARDIANSHIP OVER THE PERSON AND ESTATE OF, ADEN HAILU, An Adult Ward.	Case No. GR15-00125 Dept. No. 12
FANUEL GEBREYES, Petitioner, vs. PRIME HEALTHCARE SERVICES, LLC dba ST. MARY'S REGIONAL MEDICAL CENTER, Respondent.	

Snell & Wilmer
L.L.P.
LAW OFFICES
6100 Neil Road, #555,
Reno, Nevada 89511
775-829-6000

REQUEST FOR SUBMISSION

Respondent Prime Healthcare Services Reno, LLC d/b/a St. Mary's Regional Medical Center ("St. Mary's"), by and through its undersigned counsel, Snell & Wilmer L.L.P., hereby submits its proposed Findings of Fact and Conclusions of Law and Order Denying Petitioner's Temporary Restraining Order based on Petitioner's Ex Parte Motion for Temporary Restraining

Order filed on July 1, 2015. Attached hereto as Exhibit 1 is the proposed Findings of Fact and Conclusions of Law and Order Denying Temporary Restraining Order prepared by counsel for Respondent. Counsel for Petitioner was given a copy of Exhibit 1 on July 27, 2015, and based on information and belief counsel for Petitioner will be filing objections to Exhibit 1 forthwith.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the proceeding document does not contain the social security number of any person.

Dated: July 28, 2015

SNELL & WILMER L.L.P.

By: _____

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

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

Snell & Wilmer
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LAW OFFICES
6100 Neil Road, #555,
Reno, Nevada 89511
775-829-6000

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **REQUEST FOR SUBMISSION** by the method indicated:

XX by Court's CM/ECF Program

_____ by U.S. Mail

_____ by Facsimile Transmission

_____ by Overnight Mail

_____ by Federal Express

_____ by Electronic Service

_____ by Hand Delivery

and addressed to the following:

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

Attorney for Plaintiff

DATED: July 28, 2015

An Employee of Snell & Wilmer L.L.P.

Snell & Wilmer L.L.P. LAW OFFICES 6100 Neil Road, #555, Reno, Nevada 89511 775-829-6000

INDEX TO EXHIBITS

Exhibit No.	Title of Exhibit	No. of Pages
1.	Proposed Findings of Fact and Conclusions of Law and Order Denying Temporary Restraining Order	5

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EXHIBIT 1

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EXHIBIT 1

2840
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Attorneys for Prime Healthcare Services, LLC, dba St. Mary's Regional Medical Center

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF THE GUARDIANSHIP OVER THE PERSON AND ESTATE OF, ADEN HAILU, An Adult Ward. FANUEL GEBREYES, Petitioner, vs. PRIME HEALTHCARE SERVICES, LLC dba ST. MARY'S REGIONAL MEDICAL CENTER, Respondent.	Case No. GR15-00125 Dept. No. 12

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER DENYING TEMPORARY RESTRAINING ORDER

Petitioners, Fanuel Gebreyes and Metsihate Asfaw ("Petitioners"), the guardian and father of Aden Hailu ("Hailu") requests an Order from the Court restraining Prime Healthcare Services,

Snell & Wilmer L.L.P. LAW OFFICES 50 West Liberty Street, Suite 510 Reno, Nevada 89501 (775) 785-5440

LLC d/b/a St. Mary's Regional Medical Center ("St. Marys") from removing Hailu from her ventilator, and that St. Marys be ordered to perform, *inter alia*, a tracheostomy and gastostromy. In short, Petitioner seeks an Order directing St. Mary's to continue to perform medical procedures that St. Mary's and its physicians object to performing on the grounds that Hailu is legally dead as determined under the Uniform Determination of Death Act NRS 451.007 et seq.

This matter was originally filed as a new action (CV15-01172) by Petitioner's former counsel in Department 4 of this Court, Judge Connie Steinheimer, on June 18, 2015, seeking an Emergency Motion for Temporary Restraining Order to compel St. Mary's to continue to maintain life support services for Hailu until such time as Petitioner could obtain an independent medical evaluation of Hailu to confirm the determination of death by St. Mary's.

A hearing was held on this motion on June 18, 2015. At the conclusion of the hearing, the Parties stipulated that St. Mary's would continue to maintain life sustaining measures until July 2, 2015 during which time Petitioner must retain an independent medical expert to confirm or disaffirm that Hailu met the conditions and criteria for death under the Uniform Determination of Death Act, NRS 451.007, after which any further request for continuing maintenance of life sustaining measures would be determined by this Court.

This matter came before the Court on Petitioner's new Ex Parte Motion for Temporary Restraining Order and Emergency Petition for Order Authorizing Medical Care, Restraining Order and Permanent Injunction filed on July 1, 2015. Respondent filed an Opposition on July 2, 2015. On July 2, 2015 this Court held a hearing and took evidence and testimony. Based on the circumstances at the July 2, 2015 hearing, the Court and Parties entered a Stipulation and Order on July 20, 2015 and continued the hearing to July 23, 2015 where the Court took further evidence and testimony and argument from the Parties.

Having considered the Ex Parte Motion, Opposition, and all other papers and pleadings on file in this action, and all testimony, exhibits, and arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law, and issues the following Order which both denies Petitioner's Ex Parte Motion for Temporary Restraining Order, and Emergency Petition for Order Authorizing Medical Care, Restraining Order and Permanent Injunction filed on July 1,

Snell & Wilmer
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2015.

Findings of Fact

1. On April 1, 2015 Aden Hailu experienced abdominal pain and went to the emergency room at St. Mary's. She underwent surgery and was admitted to the hospital. Following the surgery, Aden Hailu was placed on a ventilator.

2. On or about April 17, 2015, St. Mary's and its physicians determined Aden Hailu met the definition of death per the Uniform Determination of Death Act (NRS 451.007) based on the accepted medical standards outlined by the American Academy of Neurology and therefore determined Hailu should be removed from the ventilator.

3. Petitioner refused to allow discontinuation of support services and sought court intervention, including a prior hearing in front of Judge Connie Steinheimer on June 18, 2015, as described above.

4. The testimony from St. Mary's physicians, Dr. Aaron Heide and Dr. Anthony Floreani, at the July 2nd and July 21st hearings, was credible and established Aden Hailu met the definition of death per the Uniform Determination of Death Act (NRS 451.007) based on the standards outlined by the American Academy of Neurology and that St. Mary's and its physicians followed all the mandated medical protocols and procedures in reaching their determination of death.

5. None of the evidence presented by Petitioner, including the testimony of Dr. Paul Byrne, Dr. Brian Callister and Dr. Scott Manthei either negated or questioned the substantial and compelling and credible evidence that was presented by St. Mary's that Aden Hailu is no longer alive.

6. The medical plan of care and discharge plan proposed by Petitioner is neither compelling nor convincing as a best interest plan of care for Aden Hailu because it is not sufficiently supported to a significant and reasonable degree by the medical evidence, and also because Hailu is dead as defined under the Uniform Determination of Death Act.

Conclusions of Law

1. The medical evidence substantially establishes by clear and convincing evidence Aden Hailu meets the definition of death per the Uniform Determination of Death Act (NRS 451.007)

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based on the medical standards outlined by the American Academy of Neurology.

2. NRS 449.262(1)-(2) is inapplicable since it pertains to withholding treatment and it does not go to the right to force treatment on a person who is qualified, both medically and legally, to be no longer alive.

3. Petitioner will not suffer irreparable harm if St. Mary's is not enjoined and restrained from removing Aden Hailu from the ventilator because Hailu meets the definition of death under the Uniform Determination of Death Act.

4. Petitioner is not likely to succeed on the merits of his claims.

5. The grant or denial of injunctive relief is within the reasonable discretion of the Court.

6. Having balanced the equities and the harm, including the extent of the injunctive relief requested by Petitioner, and the impact on Aden Hailu and St. Mary's of the relief requested by Petitioner, and the incidental or consequential impact on the community and ongoing relationships in the medical community, the Court believes that the equities do not favor granting injunctive relief in any amount or degree.

7. Any findings of fact set forth in this document that are conclusions of law, or conclusions of law that are findings of fact, shall be deemed findings and conclusions as appropriate.

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Snell & Wilmer
L.L.P.
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50 West Liberty Street, Suite 510
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NOW THEREFORE, the Court hereby ORDERS that:

Petitioners' Ex Parte Motion and the restraining order is denied, that the medical evidence substantially establishes by clear and convincing evidence Aden Hailu has met the criteria for death per the Uniform Determination of Death Act (NRS 451.007) based on the medical standards outlined by the American Academy of Neurology, and is legally and medically dead, and that the American Academy of Neurology standards and protocols have been thoroughly complied with such that St. Mary's is not restrained from terminating, withholding or withdrawing life support systems for Aden Hailu, but this matter will be stayed for ten (10) days beginning July 21, 2015 pending Petitioner's appeal to the Nevada Supreme Court.

IT IS SO ORDERED.

DATED: This _____day of _____, 2015.

_____
DISTRICT COURT JUDGE

Snell & Wilmer
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50 West Liberty Street, Suite 510
Reno, Nevada 89501
(775) 785-5440

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THE O'MARA LAW FIRM, P.C.
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Nevada Bar No. 00837
DAVID C. O'MARA, ESQ.
Nevada Bar No. 08599
311 East Liberty Street
Reno, Nevada 89501
Telephone: 775-323-1321
775-323-4082 (fax)

Attorneys for Fanuel Gebreyes

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

IN THE MATTER OF THE GUARDIANSHIP OVER THE PERSON AND ESTATE OF, ADEN HAILU, An Adult Ward.	Case No. GR15-00125 Dept. No. 12
FANUEL GEBREYES, Petitioner, vs. PRIME HEALTHCARE SERVICES, LLC, dba ST, MARY'S REGIONAL MEDICAL CENTER, Respondent.	

OBJECTION TO REQUEST FOR SUBMISSION OF PROPOSED ORDER

Fanuel Gebreyes, as one of the appointed Co-Guardians of Ms. Aden Hailu, An Adult Ward, through his counsel, the O'Mara Law Firm, P.C., through David C. O'Mara, Esq., objects to Respondent's request for submission. Petitioner believes that the proposed order failed to

include a finding of fact, and decreased the amount of time to seek relief from the Nevada Supreme Court. Exhibit 1 is attached to remedy this oversight.

In regards to the 10 days to seek relief from the Nevada Supreme Court. An appeal can not be filed until there is an actual written order. The Court's order is not enforceable until the decision is in writing. Thus, the 10 day period needs to start as of the date of the Court order. In fact, Respondent's claimed that they submitted the proposed order on Tuesday, July 28, 2015, at the direction of the Court and because they claimed Petitioner has such a short turn around to appeal to the Nevada Supreme Court. Interestingly, Respondent's weren't interested in providing the proposed order before Monday, July 27, 2015 and then inform counsel that they would submit the proposed order at noon on Wednesday, July 2015. Respondent's counsel are also aware that Petitioner's counsel is out of the country and if Respondent was worried about the short turnaround, they shouldn't have waited on Monday, July 27, 2015, to provide its proposed order. The Order should allow ten (10) days to seek relief from the Nevada Supreme Court.

The second additional is the Court's findings and thus, should be included in the proposed order.

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above referenced matter does not contain the social security number of any person.

DATED: July 29, 2015

THE O'MARA LAW FIRM, P.C.

/s/ David C. O'Mara
DAVID C. O'MARA

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by:

_____ Depositing in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, following ordinary business practices

_____ Personal Delivery

_____ Facsimile

_____ Federal Express or other overnight delivery

_____ Messenger Service

_____ Certified Mail with Return Receipt Requested

____X____ Electronically through the Court's ECF system

_____ Email

addressed as follows:

William Peterson, Esq.
Snell & Wilmer LLP
50 W. Liberty Street, Ste. 510
Reno, NV 89501
Fax: 775.785.5441

DATED: July 29, 2015.

/s/ David C. O'Mara
DAVID C. O'MARA

INDEX OF EXHIBITS

Exhibit No.	Description	Total Pages
1	Petitioner's Proposed Order	5

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EXHIBIT 1

EXHIBIT 1

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF THE GUARDIANSHIP OVER THE PERSON AND ESTATE OF, ADEN HAILU, An Adult Ward.	Case No. GR15-00125 Dept. No. 12
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2. On or about April 17, 2015, St. Mary's and its physicians determined Aden Hailu met the definition of death per the Uniform Determination of Death Act (NRS 451.007) based on the accepted medical standards outlined by the American Academy of Neurology and therefore determined Hailu should be removed from the ventilator.

3. Petitioner refused to allow discontinuation of support services and sought court intervention, including a prior hearing in front of Judge Connie Steinheimer on June 18, 2015, as described above.

4. The testimony from St. Mary's physicians, Dr. Aaron Heide and Dr. Anthony Floreani, at the July 2nd and July 21st hearings, was credible and established Aden Hailu met the definition of death per the Uniform Determination of Death Act (NRS 451.007) based on the standards outlined by the American Academy of Neurology and that St. Mary's and its physicians followed all the mandated medical protocols and procedures in reaching their determination of death.

5. None of the evidence presented by Petitioner, including the testimony of Dr. Paul Byrne, Dr. Brian Callister and Dr. Scott Manthei either negated or questioned the substantial and compelling and credible evidence that was presented by St. Mary's that Aden Hailu is no longer alive.

6. The Court is struck by the conflict and college of honoring Aden as living while disregarding that part of us who have to honor her if and when she dies. There is a dignity to that and there's a respect to that and the medical plan does not honor her both objectively and legally. The public policy and human dignity, privacy and familial rights under this plan disregard the most import right of a person which is to exist and to pass with dignity and respect.

7. The medical plan of care and discharge plan proposed by Petitioner is neither compelling nor convincing as a best interest plan of care for Aden Hailu because it is not

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sufficiently supported to a significant and reasonable degree by the medical evidence, and also because Hailu is dead as defined under the Uniform Determination of Death Act.

Conclusions of Law

1. The medical evidence substantially establishes by clear and convincing evidence Aden Hailu meets the definition of death per the Uniform Determination of Death Act (NRS 451.007) based on the medical standards outlined by the American Academy of Neurology.

2. NRS 449.262(1)-(2) is inapplicable since it pertains to withholding treatment and it does not go to the right to force treatment on a person who is qualified, both medically and legally, to be no longer alive.

3. Petitioner will not suffer irreparable harm if St. Mary's is not enjoined and restrained from removing Aden Hailu from the ventilator because Hailu meets the definition of death under the Uniform Determination of Death Act.

4. Petitioner is not likely to succeed on the merits of his claims.

5. The grant or denial of injunctive relief is within the reasonable discretion of the Court.

6. Having balanced the equities and the harm, including the extent of the injunctive relief requested by Petitioner, and the impact on Aden Hailu and St. Mary's of the relief requested by Petitioner, and the incidental or consequential impact on the community and ongoing relationships in the medical community, the Court believes that the equities do not favor granting injunctive relief in any amount or degree.

7. Any findings of fact set forth in this document that are conclusions of law, or conclusions of law that are findings of fact, shall be deemed findings and conclusions as appropriate.

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(775) 785-5440

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NOW THEREFORE, the Court hereby ORDERS that:

Petitioners' Ex Parte Motion and the restraining order is denied, that the medical evidence substantially establishes by clear and convincing evidence Aden Hailu has met the criteria for death per the Uniform Determination of Death Act (NRS 451.007) based on the medical standards outlined by the American Academy of Neurology, and is legally and medically dead, and that the American Academy of Neurology standards and protocols have been thoroughly complied with such that St. Mary's is not restrained from terminating, withholding or withdrawing life support systems for Aden Hailu, but this matter will be stayed for ten (10) days for ~~beginning July 21, 2015 pending~~ Petitioner to~~'s~~ appeal to the Nevada Supreme Court.

IT IS SO ORDERED.

_____

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DATED: This _____day of _____, 2015.

_____

DISTRICT COURT JUDGE

Snell & Wilmer
L.L.P.
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Reno, Nevada 89501
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FILED
Electronically
2015-07-30 05:08:39 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5071696

CODE:

IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Guardianship
of the Person and Estate of:
ADEN HAILU,
An Adult.
_____/

Case No. GR15-00125
Dept. No. 12

FANUEL GABREYES,
Petitioner,
Vs.
PRIME HEALTHCARE SEVICES, LLC dba
ST. MARY'S REGIONAL MEDICAL CENTER
Respondent
_____

ORDER DENYING TEMPORARY RESTRAINING ORDER AND PERMANENT INJUNCTION

Petitioner, Fanuel Gebreyes, the guardian and father of Aden Hailu ("Ms. Hailu") requests a Temporary Restraining Order that will restrain Defendants, Prime Healthcare Services, LLC d/b/a St. Mary's Regional Medical Center ("St. Mary's") from taking any action to remove the Ward and Petitioner's daughter, Ms. Hailu, from the ventilator and to continue medical care including, but not limited to, facilitating a tracheostomy and

insertion of a feeding tube, thyroid hormone treatment and proper nutrition "to prevent death and also to facilitate her removal from the hospital." *See July 1, 2015 Ex Parte Motion,* 1:24-2:3.

This matter was originally filed as a new action (CV15-01172) by Petitioner's former counsel in Department 4 of this Court, Judge Connie Steinheimer, on June 18, 2015, seeking an Emergency Motion for Temporary Restraining Order "prohibiting Defendants St. Mary's Regional Medical Center and Prime Healthcare Services from discontinuing life-sustaining measures, including the ventilation, presently sustaining Aden Hailu... until and including July 3, 2015, or such additional time as the Court may deem just and proper for Plaintiff's to obtain an Independent Medical Evaluation." *Emergency Motion,* 1:19-1:28.

Department 4 held an emergency hearing on June 18, 2015. The Parties stipulated that St. Mary's would "maintain all current life-sustaining services until July 2, 2015 at 5:00p.m. in order for the Plaintiff to have an independent examination of Aden Hailu; thereafter, any further request for continued life-sustaining services must be requested through the Guardianship Court." The parties further stipulated that "if on July 2, 2015, it is determined that Aden Hailu is legally and clinically deceased, the hospital shall proceed as they see fit, and the instant Complaint for Temporary Restraining Order shall be dismissed." *June 29, 2015 Court Minutes.*

On July 1, 2015, Mr. Gebreyes filed an Ex Parte Motion for Temporary Restraining Order and Emergency Petition for Order Authorizing Medical Care, Restraining Order and Permanent Injunction. Respondent filed an Opposition on July 2, 2015. Mr. Gebreyes argues injunctive relief will maintain the status quo, there is a strong likelihood of success on the merits, Ms. Hailu will suffer damage from denial of this motion, and

only a nominal bond should be required. Again, Mr. Gebreyes requests Prime Healthcare Services, LLC, "be restrained from removing Aden Hailu from the ventilator, and ordered to give thyroid hormone treatment, perform a tracheostomy and gastrostomy in order for Aden Hailu to be removed from the hospital." 6:1-6:5.

On July 2, 2015, Prime Healthcare Services filed an Opposition arguing Ms. Hailu is legally dead in accordance with accepted medical standards, there is insufficient evidence to establish a likelihood of success on the merits, the balance of all hardships tilts in favor of St. Mary's as it "will be compelled to administer useless life sustaining treatments to a dead person" and "there is a hardship on the hospital required to administer them in violation of the law, and its code of ethics, and ethical principles of morality held by licensed physicians." St. Mary's further argues that public interest "strongly favors St. Mary's because the public policy, as manifested in the Uniform Act, is to eliminate and preclude these types of disputes and debates from being adjudicated and resolved in courtrooms." 7:27-8:8.

This Court held a hearing on July 2, 2015. The parties again came to an agreement at that time as follows:

1. Petitioner has until July 21, 2015 in which to obtain the services of a physician licensed in the State of Nevada who is in good standing with the State medical board and can be credentialed by Respondent in order to examine Aden Hailu and willing to order whatever medications or procedures that licensed physician deems necessary and appropriate for Aden, to include a complete written medical plan and discharge plan. The proposed written medical plan and discharge plan for Aden Hailu will include details about how Aden Hailu will be discharged from the hospital and how she will be transported to another location.
2. Petitioner also has until July 21, 2015 in which to submit to the Court and Respondent a plan of care supported by a licensed physician in the State of Nevada that details the substance of ongoing treatment and care plan for Aden Hailu. The proposed

ongoing treatment and care plan must also be in the best interests of Aden Hailu determined by the Court as informed by the licensed physician. The care plan will include (1) the method of transportation; (2) the location of the destination; (3) a care plan for when Aden Hailu arrives at the destination; and (4) the method of payment for the ongoing care plan.

3. Petitioner will arrange for and be responsible for all payment related to all aspects of the medical plan, discharge plan and ongoing care plan.
4. Respondent will provide hospital privileges to the Nevada licensed physician as identified by Petition on an expedited basis and reasonably accommodate all medical procedures and tests ordered by the licensed physician that the licensed physician deems necessary and appropriate.
5. The July 2, 2015 hearing on Petitioner's Temporary Restraining Order is suspended until July 21, 2015 at 1:30 p.m. and at that time the Court will address all remaining issues, including supplementation of evidence which may include evidence of Respondent's ethics evaluation, and the licensed physician's (as identified by Petitioner) evaluation of Aden Hailu.

July 23, 2015 Stipulation and Order

The parties appeared before the Court again on July 21, 2015 to present additional evidence and argument. Based on the testimony, exhibits, and arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. The overwhelming weight of the credible medical evidence does not support, and directly contradicts the injunctive relief requested.
2. The testimony from St. Mary's physicians, Dr. Aaron Heide and Dr. Anthony Floreani, at the July 2nd and July 21st hearings, was credible and established Ms. Hailu meets the definition of death pursuant to the Uniform Determination of Death Act (NRS 451.007(1)(b))[1] based on standards outlined by the American

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[1] NRS 451.007 Determination of death.
1. For legal and medical purposes, a person is dead if the person has sustained an irreversible cessation of:
(a) Circulatory and respiratory functions; or
(b) All functions of the person's entire brain, including his or her brain stem.

Academy of Neurology and that St. Mary's and its physicians followed mandated medical protocols and procedures in reaching their determination.

3. None of the evidence presented by Petitioner, including the testimony of Dr. Paul Byrne, Dr. Brian Callister and Dr. Scott Manthei negated the substantial, compelling, and credible evidence presented by St. Mary's.

4. The medical plan of care and discharge plan orally proposed by Petitioner is neither compelling nor convincing as a best interest plan of care for Aden Hailu because it is not sufficiently supported by medical evidence. NRS 159.073(1)(c)(1)(I).

Conclusions of Law

1. The requirements to be established by Petitioner for a Temporary Restraining Order are that it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result. NRCP 65.[2]

2. Pursuant to *University and Community College Systems of Nevada*[3], before a preliminary injunction will issue, the movant must show: (1) a likelihood of success on the merits, and (2) a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which

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2. A determination of death made under this section must be made in accordance with accepted medical standards.
3. This section may be cited as the Uniform Determination of Death Act and must be applied and construed to carry out its general purpose which is to make uniform among the states which enact it the law regarding the determination of death.

[2] The second prong of NRCP 65 requires that the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. This is not discussed here as notice was properly given and the respondent attended each hearing.

3 120 Nev. 712, 721, 100 P.3d 179, 187 (2004)

compensatory damages is an inadequate remedy. The Court must also weigh the potential hardships to the relative parties and others, and the public interest. The grant or denial of injunctive relief is within the reasonable discretion of the Court. *See* NRS 33.010. *See also, Sobol v. Capital Management Consultants, Inc.* 102 Nev. 444, 446, 726 P.2d 335, 337 (1986); *Pickett v. Comanche Construction, Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992).

3. The medical evidence herein substantially establishes by clear and convincing evidence that Ms. Hailu meets the definition of death pursuant to the Uniform Determination of Death Act (NRS 451.007(1)(b)) consistent with the medical standards and protocols outlined by the American Academy of Neurology.
4. NRS 449.626(1)-(2) pertains to withholding treatment and does not go to the right to require the administration of medical treatment for a person or family member without a reasonable medical basis for the same.
5. The medical and care plan for Ms. Hailu as presented by Mr. Gebreyes is not in the best interests of the Ms. Hailu. The Court, separately from the request for and refusal of injunctive relief, does not affirm the treatment plan as proposed by Mr. Gebreyes as it is unsupported by credible medical evidence.
6. Petitioner will not suffer immediate and irreparable harm if St. Mary's is not enjoined and restrained from removing Ms.Hailu from the ventilator because medical evidence establishes that Ms. Hailu meets the definition of death under the Uniform Determination of Death Act (NRS 451.007(1)(b)) for legal and medical purposes.

7. Petitioner is not likely to succeed on the merits of his claims based on the insufficiency of medical evidence presented in support of his position, and in consideration of the weight of the medical evidence presented by St. Mary's.

8. Having balanced the equities and the potential harm, including the extent of the injunctive relief requested by Petitioner, and the impact upon Ms.Hailu, Mr. Gabreyes and St. Mary's, the Court finds that equity does not favor granting injunctive relief. The medical evidence substantially establishes by clear and convincing evidence. Ms. Hailu meets the definition of death per the Uniform Determination of Death Act (NRS 451.007(1)(b)) for legal and medical purposes consistent with the medical standards and protocols outlined by the American Academy of Neurology.

9. The public interest in this matter is ensuring effectuation of Nevada law and in the treatment and care of Ms. Hailu and similarly situated parties. There is a clear public interest in medical professionals making a final determination of death in these circumstances. Under the Uniform Determination of Death Act, there is a clear public interest in the proper treatment of Ms. Hailu after a determination is made consistent with NRS 451.007(1)(b).

10. Any findings of fact set forth in this document that are conclusions of law, or conclusions of law that are findings of fact, shall be deemed findings and conclusions as appropriate.

Based on the foregoing, the Court ORDERS that:

1. Petitioners' Ex Parte Motion and the Request for Restraining Order are denied.

2. St. Mary's is not restrained from terminating, withholding, or withdrawing life support systems for Ms.Hailu.

3. This order will be stayed for ten days from the date of entry of this order to allow the Petitioner to seek review by the Nevada Supreme Court.

IT IS SO ORDERED.

Dated: the 30th day of July, 2015.

Frances M. Doherty
District Court Judge

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court, and that on the _____ day of July, 2015, I deposited for mailing, first class postage pre-paid, at Reno, Nevada, a true and correct copy of the foregoing document addressed to:

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on the 30 day of ~~April~~ July, 2015, I electronically filed the foregoing with the Clerk of Court by using the ECF system which will send a notice to:

William E. Peterson, Esq.

William O'Mara, Esq.

Diana L.

Court Employee

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE GUARDIANSHIP OF THE PERSON AND ESTATE OF ADEN HAILU, AN ADULT FANUEL GEBREYES, Appellant, vs. PRIME HEALTHCARE SERVICES, LLC, D/B/A ST. MARY'S REGIONAL MEDICAL CENTER, Respondent.	No. 68531	Electronically Filed Aug 28 2015 08:57 a.m. Tracie K. Lindeman Clerk of Supreme Court

APPELLANT'S APPENDIX

VOLUME I

(Bates Stamps 001-250)

THE O'MARA LAW FIRM, P.C.
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Attorneys for Appellant

Docket 68531 Document 2015-26114

List of Appendix Documents

Title of Document	Filing Date	Volume	Bates Stamp
Points and Authorities in Support of Petition for Order Authorizing Medical Treatment, Restraining Or [sic] and for Permanent Injunction	07.01.15	I	001-007
Emergency Petition for Order Authorizing Medical Care, Restraining Order and Permanent Injunction	07.01.15	I	008-036
Opposition to Motion for Temporary Restraining Order	07.02.15	I	037-115
Request for Submission	07.28.15	I	116-125
Objection to Request for Submission of Proposed Order	07.30.15	I	126-135
Order Denying Temporary Restraining Order and Permanent Injunction	07.30.15	I	136-144
Transcript of Proceedings of July 2, 2015 Hearing (Pages 1–106)	07.02.15	I	145-250
Transcript of Proceedings of July 2, 2015 Hearing (Pages 107-179 and Word Index Pages 1-26)	07.02.15	II	251-349
Notice of Filing July 21, 2015 Hearing Transcript	08.07.15	II	350-351
Transcript of Proceedings of July 21, 2015 Hearing	07.21.15	II	352-460
Ex Parte Motion for Temporary Restraining Order	07.01.15	II	461-467
List of District Court Exhibits	07.02.15	II	468-469
District Court Trial Exhibits Vol. 1	07.02.15	II	470-500
District Court Trial Exhibits Vol. 2	07.02.15	III	501-595
District Court Minutes from Emergency Hearing on July 2, 2015	07.17.15	III	596-600
District Court Minutes from Continued Emergency Hearing on July 21, 2015	07.24.15	III	600-606

CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

_____ Depositing for mailing, in a sealed envelope, U.S. Postage prepaid, at Reno, Nevada

_____ Personal delivery

_____ Facsimile

_____ Messenger Service

_____ Federal Express or other overnight delivery

__X__ Electronically through the Court's ECF Systems

addressed as follows:

William Peterson, Esq.
Janine C. Prupas
Snell & Wilmer, LLP
50 W. Liberty Street, Ste. 510
Reno, NV 89501
Fax: 775.785.5441

DATED: August 27, 2015.

/s/ Valerie Weis

VALERIE WEIS

FILED
Electronically
2015-07-01 12:38:52 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 5026639 : mcholico

CODE NO.
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Nevada Bar No. 00837
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775-323-4082 (fax)

Attorneys for Fanuel Gebreyes

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

IN THE MATTER OF THE GUARDIANSHIP OVER THE PERSON AND ESTATE OF, ADEN HAILU, An Adult Ward.	Case No. GR15-00125 Dept. No. 12
FANUEL GEBREYES, Petitioner, vs. PRIME HEALTHCARE SERVICES, LLC, dba ST, MARY'S REGIONAL MEDICAL CENTER, Respondent.	

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR ORDER AUTHORIZING MEDICAL TREATMENT, RESTRAINING OR AND FOR PERMANENT INJUNCTION

(Nev. Rev. Stat. §§ 159.1998(3); 449.626; 449.628.

INTRODUCTION

Statement of Facts

Ms. Aden Hailu is a patient at respondent Saint Mary's Regional Medical Center in Reno, Nevada. On April 1, 2015, Ms. Hailu was admitted to the hospital for abdominal pain and fever. Respondent Dr. Chu did laparotomy and appendectomy.

Ms. Hailu lapsed into a coma on April 1, 2015.

Ms. Hailu does not have a spouse or adult children. Petitioner Fanuel Gebreyes is Ms. Hailu's father, and her legally appointed guardian. Petitioner Metsihate Asfaw is Ms. Hailu's cousin and is also her legally appointed guardian.

Against the Petitioner's wishes, respondent doctor or doctors at St. Mary's Regional Medical Center, administered an apnea test to Ms. Hailu, and declared that she was legally "brain dead." Petitioner believes this determination was made improperly, without medical justification, and should be ignored. See declaration of Dr. Paul Byrne, accompanying this Petition.

The guardians are in agreement over the appropriate course of treatment, namely the continued use of the ventilator, doing a tracheostomy and gastrostomy, and the administration of CPR and other emergency measures as necessary, and would additionally like Ms. Hailu's hypothyroidism and other medical conditions to be treated.

Respondents threatened that they would remove Ms. Hailu's life support on Friday, June 19, 2015, but then deferred the threat to remove to July 3, hence the emergency nature of this petition.

Summary of Argument

Respondents have disregarded proper procedures in declaring "brain death," and have prematurely determined that Ms. Hailu is dead. The court is thus required to make a determination of whether that declaration of death will stand. In face of compelling evidence provided by an expert in the field that Ms. Hailu is alive, this case is properly before the court on the question of who controls healthcare decisions for Ms. Hailu.

Nevada statutes regarding healthcare decision-making express a clear policy in favor of placing such decisions in the hands of patients and their families, and not in the hands of healthcare professionals. Nev. Rev. Stat. §§ 449.600, *et seq*. Moreover, where there is a conflict between the treatment a patient or her decision-maker decides upon and what a health care provider is willing to administer, Nevada law requires the health care provider to assist the appropriate decision-makers to transfer the patient to the care of provider willing to administer the requested treatment. Nev. Rev. Stat. §449.628.

Nevada also has a common law tradition in favor of patients and their families making health care decisions, rather than doctors, *see, e.g., McKay v. Bergstedt*, 106 Nev. 808 (Nev.Sup. Ct. 1990). This body of law is rooted in patients' privacy and autonomy rights to control their own bodies, to decide for themselves who will make decisions regarding their health care when they are unable, and to have health care decisions made in accord with their best interests.

These statutory and common law bodies of law mean that the Petitioners, as Ms. Hailu's family and her guardians, and not the Respondents, are the appropriate persons to decide the purpose and scope of treatment Ms. Hailu will receive. If the Respondents feel they cannot carry out the Petitioner's decisions, they must assist him in doing the urgent treatments of administration of thyroid hormone and doing a tracheostomy and gastrostomy so that Ms. Hailu can be safely transferred to a health care provider or to the home of Fanuel Gebreyes, the father and legal Guardian of Ms. Hailu. Nev. Rev. Stat. §449.628.

ARGUMENT

I. Nevada Statutes protect patient wishes regarding life-sustaining treatment

Under Nevada Law, a decision to remove or withhold life-sustaining treatment requires the explicit consent of the patient in the form of a written, signed declaration. Nev. Rev. Stat. §449.610. The value of this written directive is to ensure the integrity of the patient's control over his or her own body and decisions with regard to treatment. This protection provided to a patient competent to make his or her own decisions should be, if anything, more carefully applied when decisions are made on an incompetent patient's behalf.

Nevada's Uniform Act on Rights of the Terminally Ill, codified in Nev. Rev. Stat. §§ 449.535 - 449.690, authorizes the use of three procedures by which terminally ill patients or their families can legally implement their wishes with regard to withholding or withdrawing life-sustaining treatment. First, an individual may execute a declaration directing an attending physician to withhold or withdraw life-sustaining treatment under certain circumstances. Nev. Rev. Stat. § 449.600(1). Second, an individual may execute a declaration designating another person to make decisions on the individual's behalf regarding withholding or withdrawing life-sustaining treatment. Nev. Rev. Stat. § 449.600(1). Third, in the absence of either an express declaration or a declaration designating another person to make life-sustaining treatment decisions, a terminally ill patient's attending physician may withhold or withdraw life-sustaining treatment from the patient upon receiving surrogate consent from certain members of the patient's family. Nev. Rev. Stat. § 449.626(1)-(2). *Estate of Maxey v. Darden*, 124 Nev. 447, 449 (NV Sup. Ct. 2008)

While she is unconscious, Ms. Hailu's wishes and best interests are being ably represented by her duly appointed guardian, Fanuel Gebreyes. Decisions with regard to her treatment are therefore her guardian's domain, and should not be unilaterally made by healthcare providers.

II. When there is a conflict, Nevada Law requires health care providers work with decision makers to transfer the patient's care

In general, health care providers must comply with a family or decision-maker's wishes for an incompetent patient as surely as they must comply with a competent patient's wishes, Nev. Rev. Stat. §449.617, unless transfer is warranted under Nev. Rev. Stat. §449.628.

Physicians at Saint Mary's Regional Medical Center believe that the patient, Ms. Hailu is dead. They use this as their justification for terminating Ms. Hailu's ventilator and other life supporting treatments and care. They are wrong. While the Petitioner understands that Ms. Hailu lapsed into coma in early April and continues not to respond to evaluation by doctors and that the doctors have concluded that their criteria for cessation of all functions of her entire brain has been fulfilled. They have ignored that Aden maintains her temperature and blood pressure and that her

hypothalamus, a part of her brain, is making thyroid stimulating hormone. Aden is a living human being who continues to have functioning of her heart, her liver, her pancreas and her kidneys, which is entirely inconsistent with her being a corpse. See statement of Paul A. Byrne, M.D. Further, her body is warm with normal pulse and blood pressure and continues to heal itself as is evident by small lacerations on her that have healed.

The Petitioner believes a treatment facility willing to take Ms. Hailu can be found or if Aden gets thyroid hormone, a tracheostomy and gastrostomy that they can take care of her at home.

Even if the Respondents had a lawful reason for refusing the requested treatment, they have not fulfilled their statutory duty to assist Ms. Hailu and her family under Nev. Rev. Stat. §449.628, which requires health care providers not only to inform patients and their families that they are refusing to provide requested treatment, but also to assist them in transferring the patient to a situation where the patient will be appropriately cared for and to continue providing care while the transfer is being arranged. Rather than helping the Ms. Hailu's family, as they are obliged by statute, the Respondents have attempted to bully, threaten, and trick them into going their way. They performed an apnea test without the family's knowledge, and against the family's expressed desire. They have not taken reasonable steps to transfer the patient's care to a willing provider. They are therefore in violation of Nev. Rev. Stat. §449.628 and this petition must be granted to correct the situation.

IV. Public policy favors a presumption in favor of preservation of life

Trust in the healthcare profession as healers is fundamental to the proper functioning of our society. "Health care professionals serve patients best by maintaining a presumption in favor of sustaining life..." (Deciding to Forego Life-Sustaining Treatment, at pp. 3, 5 (U.S. GPO 1983) (Report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research).)... Indeed, this has been described as a "social commitment of the physician to sustain life and relieve suffering..." Withholding or Withdrawing Life Prolonging Medical Treatment" (Council on Ethical and Judicial Affairs, American Medical Association). (*See Bouvia v. Super. Ct.*, 225 Cal. Rptr. 297, 303 (Ca. App. Ct. 1986).) This court

has the opportunity to help restore that patient-physician trust. By ensuring that proper safeguards are in place prior to a designation of "death," the relationship between physicians and patients will be strengthened.

CONCLUSION

Under Nevada law, the appropriate party to make medical decisions for an incompetent patient, such as Ms. Hailu is her duly appointed guardian or guardians, the Petitioner. The law requires healthcare providers such as the Respondents to assist families in transferring the medical care of patients when there is a dispute regarding what treatment is appropriate. There is no evidence that termination of Ms. Hailu's treatment is what she wants or is in her best interest. Finally, public policy supports the preservation of life, even the lives of the very ill.

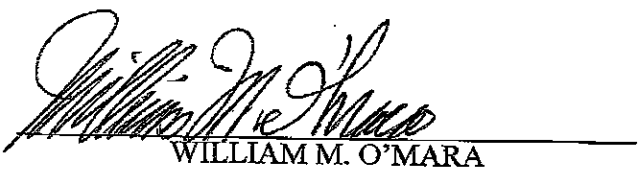
For these reasons, this court should issue an order to restrain the proposed actions of St. Mary's Regional Medical Center and prescribe the health care of the patient pursuant to the instructions of her guardians, the Petitioners in this case.

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above referenced matter does not contain the social security number of any person.

DATED: July 1, 2015

THE O'MARA LAW FIRM, P.C.



WILLIAM M. O'MARA

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Facsimile: 775-323-4082

Attorneys for Fanuel Gebreyes

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by:

_____ Depositing in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, following ordinary business practices

___X___ Personal Delivery

_____ Facsimile

_____ Federal Express or other overnight delivery

_____ Messenger Service

_____ Certified Mail with Return Receipt Requested

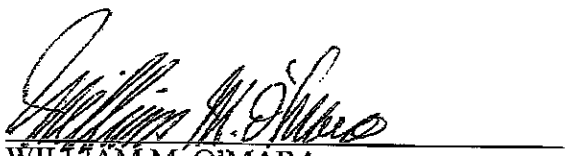
_____ Electronically through the Court's ECF system

_____ Email

addressed as follows:

William Peterson, Esq.
Snell & Wilmer LLP
50 W. Liberty Street, Ste. 510
Reno, NV 89501
Fax: 775.785.5441

DATED: July 1, 2015.



WILLIAM M. O'MARA

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Attorneys for Fanuel Gebreyes

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

IN THE MATTER OF THE GUARDIANSHIP OVER THE PERSON AND ESTATE OF, ADEN HAILU, An Adult Ward.	Case No. GR15-00125 Dept. No. 12
FANUEL GEBREYES, Petitioner, vs. PRIME HEALTHCARE SERVICES, LLC, dba ST, MARY'S REGIONAL MEDICAL CENTER, Respondent.	

EMERGENCY PETITION FOR ORDER AUTHORIZING MEDICAL CARE, RESTRAINING ORDER AND PERMANENT INJUNCTION

COMES NOW Fanuel Gebreyes, as one of the appointed Co-Guardians of Ms. Aden Hailu, An Adult Ward, by and through his counsel, The O'Mara Law Firm, P.C., by William M. O'Mara,

Esq., and hereby petitions this Honorable Court for an order authorizing medical care based on the following.

1. On the 1st day of April, 2015, Aden Hailu went into St. Mary's Regional Medical Center, which is owned by Prime Healthcare Services, LLC, for abdominal pain and fever.

2. Dr. Chu performed a laparotomy and appendectomy, after which Ms. Hailu lapsed into a coma on April 1, 2015.

3. As a result, Ms. Aden Hailu is a continuing patient at St. Mary's Medical Center in Reno, Nevada.

4. On April 5, 2015, Fanuel Gebreyes instructed the hospital staff and doctors not to perform an apnea test.

5. On April 16, 2015, Petitioner, along with Metsihate Asfaw, petitioned for the appointment of permanent guardians over the person and estate of Aden Hailu. On April 17, 2015, a temporary order of guardianship was granted and was entered on May 8, 2015. On May 26, 2015, after hearing, the petition for permanent guardianship was granted.

6. Again, on April 16, 2015, Fanuel Gebreyes, father, refuses an apnea test upon his daughter.

7. On at least two (2) prior occasions, the doctors and hospital have implied that Ms. Hailu's organs be donated to another patient, which Mr. Gebreyes refused. Upon information and belief, had Mr. Gebreyes agreed to the organ donation, Ms. Hailu would have then received thyroid treatment to energize the organs to be donated for transplant.

8. On April 17, 2015, the Court authorized the disclosure of medical records. Said medical records were disclosed.

9. Thereafter, the medical records were reviewed by Paul Byrne, M.D. Dr. Byrne's declaration is attached as Exhibit 1 and by reference made a part hereof.

10. On or about April 18, 2015, a hearing was held in another Court. A copy of the minutes are attached as Exhibit 2, and by reference made a part hereof.

11. Upon information and belief, Prime Healthcare Services, LLC, dba St. Mary's Medical Center, has disregarded proper procedures in declaring brain death and have prematurely determined that Ms. Hailu is dead. Ms. Hailu's father and co-guardian has visited his daughter daily. He has personally observed his daughter functionally able to heal minor abrasions, which indicate her circulatory system and other organs including her heart, liver, kidney, spleen, pancreas and her entire being are functioning (see Declaration of Fanuel Gebreyes attached hereto as Exhibit 3 and by reference made a part hereof).

12. On a prior occasion, the Petitioner sought an extension from the Court other than this guardianship case. A copy of those minutes are attached as Exhibit 3 and by reference made a part hereof. At the time, no doctor representing the Ward or guardian was available to explain the proper medical care for Aden as well as the advancement in medicine made in this area.

13. The Nevada Uniform Act of Rights of the Terminally Ill, codified in Nevada Revised Statutes 449.535 through 449.690, authorizes the use of three (3) procedures by which terminally ill patients or their families can legally implement their wishes with regard to withholding or withdrawing life sustaining treatment as more specifically stated in the Memorandum of Points and Authorities.

14. Under NRS 451.007, a person is dead for legal and medical purposes, if the person has sustained an irreversible cessation of

(a) Circulatory and respiratory functions; or

(b) All functions of the person's entire brain, including his or her brain stem.

The hospital wishes to use only section (b) and then by interpreting it to mean that the brain stem is the only function to determine death. The wording of the statute includes all functions of the entire brain not just his or her brain stem.

15. Mr. Gebreyes has in the past and still requests that the staff and hospital provide continuing treatment, including, a tracheostomy, gastrostomy, thyroid hormone and proper nutrition to prevent death and to also facilitate her removal from the hospital as more specifically indicated in Paul A. Byrne, M.D.'s Declaration in support of the petition for order authorizing medical care. That the entire reasonable time to provide the proper medical care in order to allow Ms. Hailu to be in a position to be transported to her guardian's home is five (5) days.

16. Without the Court's orders, Ms. Hailu will surely die and irreversible harm will be done.

WHEREFORE, it is requested that the Court Order:

1. A temporary restraining order, restraining Prime Healthcare Services, LLC from removing Aden Hailu from the ventilator.

2. That a hearing be set and after hearing a permanent injunction be granted.

3. That the Court order the medical care requested by the guardian for the Ward.

4. That upon the completion of the medical care as requested, that the Guardian be authorized to move the Ward to his home.

5. That St. Mary's Regional Medical Center and any doctor be released of any liability for performing any of these requested medical care procedures.

6. For such other relief as this Court deems just and reasonable.

AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document filed in the above

referenced matter does not contain the social security number of any person.

DATED: July 1, 2015

THE O'MARA LAW FIRM, P.C.

WILLIAM M. O'MARA

311 East Liberty Street
Reno, Nevada 89501
Telephone: 775-323-1321
Facsimile: 775-323-4082

Attorneys for Fanuel Gebreyes

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O'Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by:

_____ Depositing in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, following ordinary business practices

____X____ Personal Delivery

_____ Facsimile

_____ Federal Express or other overnight delivery

_____ Messenger Service

_____ Certified Mail with Return Receipt Requested

_____ Electronically through the Court's ECF system

_____ Email

addressed as follows:

William Peterson, Esq.
Snell & Wilmer LLP
50 W. Liberty Street, Ste. 510
Reno, NV 89501
Fax: 775.785.5441

DATED: July 1, 2015.

WILLIAM M. O'MARA

INDEX OF EXHIBITS

Exhibit No.	Description	Total Pages
1	Declaration of Dr. Byrne	14
2	Minutes	1
3	Declaration of Fanuel Gebreyes	4

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EXHIBIT 1

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IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

IN THE MATTER OF THE GUARDIANSHIP OVER THE PERSON AND ESTATE OF, ADEN HAILU, An Adult Ward.	Case No. GR15-00125 Dept. No. 12
FANUEL GEBREYES, Petitioner, vs. PRIME HEALTHCARE SERVICES, LLC, dba ST, MARY'S REGIONAL MEDICAL CENTER, Respondent.	

DECLARATION IN SUPPORT OF PETITION FOR ORDER AUTHORIZING MEDICAL TREATMENT, RESTRAINING ORDER AND PERMANENT INJUNCTION

(Nev. Rev. Stat. §§ 159.1998(3); 449.626; 449.628

Declarant, Paul A. Byrne, M.D., states under penalty of perjury that the following statements are true to the best of my knowledge and after review of the medical records disclosed by St. Mary's Regional Medical Center:

1. I have personal knowledge of all the facts contained herein and if called to testify as a witness I would and could competently testify thereto.

2. I am a physician licensed in Missouri, Nebraska and Ohio. I am Board Certified in Pediatrics and Neonatal-Perinatal Medicine. I have published articles on "brain death" and related topics in the medical literature, law literature and the lay press for more than thirty years. I have been qualified as an expert in matters related to central nervous system dysfunction in Michigan, Ohio and Virginia.

3. I have reviewed the medical records of Aden Hailu, the patient in these proceedings. I have visited Aden Hailu in St. Mary's Regional Medical Center. Ventilator was in place.

4. Aden Hailu suffers from the effects of hypoxia and hypothyroidism as well as other conditions that require continuing medical treatment.

5. Aden Hailu receives or did receive treatment for diabetes insipidus by medication administered intravenously. The patient's family and I agree this treatment should continue.

6. Aden Hailu was admitted to Saint Mary's Regional Medical Center on April 1, 2015. She had abdominal pain for which exploratory laparoscopy and appendectomy was done. Aden was very anemic (Hb 7.2 Gm%, Hb 5.6 Gm%). At or near the end of the surgery blood pressure decreased. For this Aden was treated. Aden is said to have problem with her brain since the hypoxic episode. Subsequent to this doctors made a declaration of "brain death."

7. Aden has been receiving ventilator support to assist the functioning of her lungs via endotracheal tube. Tracheostomy has not been done.

8. During surgery or shortly thereafter a nasogastric tube was inserted. This was then used to administer nutrition and hydration. However, this has been stopped.

9. On June 2, or thereabouts, Fanuel Hailu, father of Aden, was informed that an apnea test had been done about one week earlier by physicians at Saint Mary's Regional Medical Center.

Medical records include that when the ventilator was removed, Aden's pH became 7.13. Her pCO2 102. This testing did not help Aden and could have only harmed her.

10. Aden Hailu has not been treated for her underlying hypothyroidism. Thyroid hormone is necessary for ordinary normal health and healing of the brain. Lack of thyroid hormone may account for her continued coma. The following information on the importance of hypothyroidism in cases of brain damage is from published studies:

A) Shulga A, Blaesse A, Kysenius K, Huttunen HJ, Tanhuanpää K, Saarma M, Rivera C. Thyroxin regulates BDNF expression to promote survival of injured neurons. Mol Cell Neurosci. 2009 Dec;42(4):408-18. doi: 10.1016/j.mcn.2009.09.002. Epub 2009 Sep 16.

Abstract: A growing amount of evidence indicates that neuronal trauma can induce a recapitulation of developmental-like mechanisms for neuronal survival and regeneration. Concurrently, ontogenic dependency of central neurons for brain-derived neurotrophic factor (BDNF) is lost during maturation but is re-acquired after injury. Here we show in organotypic hippocampal slices that thyroxin, the thyroid hormone essential for normal CNS development, induces up-regulation of BDNF upon injury. This change in the effect of thyroxin is crucial to promote survival and regeneration of damaged central neurons. In addition, the effect of thyroxin on the expression of the K-Cl cotransporter (KCC2), a marker of neuronal maturation, is changed from down to up-regulation. Notably, previous results in humans have shown that during the first few days after traumatic brain injury or spinal cord injury, thyroid hormone levels are often diminished. Our data suggest that maintaining normal levels of thyroxin during the early post-traumatic phase of CNS injury could have a therapeutically positive effect.

Available at: http://www.hindawi.com/journals/jtr/2013/312104/

B) Mourouzis I, Politi E, Pantos C. Thyroid hormone and tissue repair: new tricks for an old hormone? J Thyroid Res. 2013;2013:312104. doi: 10.1155/2013/312104. Epub 2013 Feb 25.

Abstract: Although the role of thyroid hormone during embryonic development has long been recognized, its role later in adult life remains largely unknown. However, several lines of evidence show that thyroid hormone is crucial to the response to stress and to poststress recovery

and repair. Along this line, TH administration in almost every tissue resulted in tissue repair after various injuries including ischemia, chemical insults, induction of inflammation, or exposure to radiation. This novel action may be of therapeutic relevance, and thyroid hormone may constitute a paradigm for pharmacologic-induced tissue repair/regeneration.

C) Shulga A, Rivera C. Interplay between thyroxin, BDNF and GABA in injured neurons. Neuroscience. 2013 Jun 3;239:241-52. doi: 10.1016/j.neuroscience.2012.12.007. Epub 2012 Dec 13.

Abstract: Accumulating experimental evidence suggests that groups of neurons in the CNS might react to pathological insults by activating developmental-like programs for survival, regeneration and re-establishment of lost connections. For instance, in cell and animal models it was shown that after trauma mature central neurons become dependent on brain-derived neurotrophic factor (BDNF) trophic support for survival. This event is preceded by a shift of postsynaptic GABAA receptor-mediated responses from hyperpolarization to developmental-like depolarization. These profound functional changes in GABAA receptor-mediated transmission and the requirement of injured neurons for BDNF trophic support are interdependent. Thyroid hormones (THs) play a crucial role in the development of the nervous system, having significant effects on dendritic branching, synaptogenesis and axonal growth to name a few. In the adult nervous system TH thyroxin has been shown to have a neuroprotective effect and to promote regeneration in experimental trauma models. Interestingly, after trauma there is a qualitative change in the regulatory effect of thyroxin on BDNF expression as well as on GABAergic transmission. In this review we provide an overview of the post-traumatic changes in these signaling systems and discuss the potential significance of their interactions for the development of novel therapeutic strategies.

The results of test of thyroid function of Aden Hailu are:

4/3/15 TSH: 0.455 (normal 0.358-3.74)

6/5/15: TSH 0.694 (normal 0.358-3.74)

6/5/15: T3: 37 (Normal 71-180) [VERY LOW]

6/5/15: T4: 3.2 (Normal 4.8-13.9) [VERY LOW]

Aden's brain (hypothalamus) is producing TSH, thyroid stimulating hormone, which has a half-life of only a few minutes. Therefore, her brain tissue is alive and receiving enough blood supply to remain alive as well as to release TSH, thyroid stimulating hormone, into the hypothalamus-hypophysis portal circulation, so that TSH remains detectable in the general circulation.

If image scans are not sensitive enough to detect hypothalamic circulation known to exist, they are not sensitive enough to detect circulation in any other part of Aden's brain. Other parts of the brain may be only functionally silent (due to the lack of higher levels of energy they need to work compared to the level of energy that hypothalamic cells require to produce TSH) but still functionally recoverable if proper treatment is given.

First conclusion: image scans are useless to confirm irreversible damage to the whole brain.

Second conclusion: if hypothalamus is working, her hypothalamus, which is part of Aden's brain is alive and the criteria, the legal concept of "whole brain death," is not fulfilled.

Third conclusion: because TSH is not produced in sufficient amounts, T4 is low and brain edema is turned into brain myxedema. If T4 is given, brain circulation can only increase and resume normal levels, thereby restoring normal neurological and hypothalamic function.

The results of the thyroid tests have been reviewed by Dr. Cicero G. Coimbra, Professor and head of Neurology and Neuroscience at Federal University of Sao Paulo, Brazil. Dr. Coimbra has cosigned the attached statement regarding functioning of the hypothalamus, thyroid gland, and other parts of the brain (see Exhibit 1 attached hereto and made a part hereof).

11. Aden is dependent upon her ventilator to keep her alive. Tracheostomy was indicated and should have been done on about April 15. If it had been done at that time, her treatment and care would have been facilitated. A tracheostomy still needs to be done. If the endotracheal tube is removed, very likely Aden's airway will not remain open for breathing. If Aden is disconnected from the ventilator, she likely would be unable to breathe on her own because of the duration of time she has been on the ventilator.

12. With proper medical treatment as proposed by her guardians, Aden is likely to continue to live, and may find limited to full recovery of brain function, and may possibly regain consciousness.

13. Aden has a beating heart without support by a pacemaker or medications. Aden has circulation and respiration and many interdependent functioning organs including liver, kidneys and pancreas. In spite of very low thyroid Aden's body continues to manifest healing for minor injuries Aden is a living person who passes urine and has bowel movements. These are functions that do not occur in a cadaver after true death.

14. Patients in a condition similar to Aden Hailu's clinical state may indeed achieve total or partial neurological recovery even after having fulfilled criteria of "brain death" legally accepted in the State of Nevada, or established anywhere in the world, provided that they receive treatments based on recent scientific findings (although not yet commonly incorporated into medical practice).

15. The criteria for "brain death" are multiple and there is no consensus as to which set of criteria to use (Neurology 2008). The criteria supposedly demonstrate alleged brain damage from which the patient cannot recover. However, there are many patients who have recovered after a declaration of "brain death." (See below.) Aden is not deceased; Aden is not a cadaver. Aden has a beating heart with a strong pulse, blood pressure and circulation. Aden makes urine, has bowel movements, and develops fever. These are indications that Aden is alive.

16. Aden is not a cold corpse. Her body temperature has not equilibrated with the environmental temperature as it would have if Aden were a corpse.

17. The latest scientific reports indicate that patients deemed to be "brain dead" are actually neurologically recoverable. I recognize that such treatments are not commonly done. Further it is recognized that the public and the Court must be wondering why doctors don't all agree that "brain death" is true death. Aden, like many others, continues to live in spite of little or no attention to detail necessary for treating a person on a ventilator. Aden, like all of us needs thyroid hormone. Many persons are on thyroid hormone because they would die without it.

18. The diagnosis of "brain death" is currently based on the occurrence of severe brain swelling unresponsive to current therapeutic methods. The brain swelling in Aden Hailu began with the cardio-respiratory arrest that occurred more than 2 and almost 3 months ago. Progressive expansion of brain swelling raises the pressure inside the skull thereby compressing the blood vessels that supply nutrients and oxygen to the brain tissue itself. Upon reaching maximum levels, the pressure inside the skull may eventually stop the cerebral blood flow causing brain damage. However, Aden Hailu almost certainly has not reached complete cessation of brain circulation and may achieve even complete or nearly complete neurological recovery if she is given proper treatment soon. Every day that passes, Aden is deprived of adequate nutrition and thyroid hormone required for healing.

19. The questions presented here refer to (1) the unreliability of methods that have been used to identify death and (2) the fact that no therapeutic methods that would enable brain recovery have been used so far. In fact, the implementation of such therapeutic methods are being obstructed in every possible way by St. Mary's Regional Medical Center in the hope that Aden's heart stops beating, thereby precluding her recovery through the implementation of new therapeutic methodologies.

20. The brain of Aden Hailu is probably being supplied by a partially reduced level of blood flow, insufficient to allow full functioning of her brain, such as control of respiratory muscles and production of a hormone controlled by the brain itself. This is called thyroid stimulating hormone, TSH, which then stimulates the thyroid gland to produce its own hormones. Without TSH Aden has hypothyroidism. The consequent deficiency of thyroid hormones sustains cerebral edema and prevents proper functioning of the brain that control respiratory muscles.

21. On the other hand, partially reduced blood flow to her brain, despite being sufficient to maintain vitality of the brain, is too low to be detected through imaging tests currently used for that purpose. Employing these methods currently used for the declaration of "brain death" confounds lack of manifestation of circulation to her brain with actual absence of circulation to her brain. Both reduced availability of thyroid hormones and partial reduction of brain blood flow also inhibit brain electrical activity, thereby preventing the detection of brain waves on the EEG.

The methods currently used for the declaration of "brain death" confound flat brain waves with the lack of vitality of the cerebral cortex.

22. In 1975, Joseph, a patient of mine, was on a ventilator for 6 weeks. He wouldn't move or breathe. An EEG was flat without brainwaves, which was interpreted by neurologists as "consistent with cerebral death." It was suggested to stop treatment. I continued to treat him. Eventually, Joseph was weaned from the ventilator, went to school and is now married and has 3 children.

23. The fact that Aden Hailu's brain still controls her blood pressure and temperature and produces thyroid stimulating hormone indicates that her brain is functioning and not irreversibly damaged. Rather, Aden is in a condition best described in layman's terms as similar to partial hibernation – a status to which an insufficient production of thyroid hormones also contributes.

24. The administration of thyroid hormone constitutes the fundamental therapeutic method that can reduce brain edema, relieving the pressure of cerebral edema on blood vessels and restoring normal levels of brain blood flow. By reestablishing the normal range of brain blood flow, recovery of her brain can be expected. In other words, she would regain consciousness and breathe on her own (without the aid of mechanical ventilation). That, however, cannot be accomplished by using only a ventilator and not giving better nutrition. Aden indeed requires active treatment capable of inducing neurological recovery. Correction of other metabolic disorders may enhance her chances of recovery.

25. Even a person in optimal clinical condition would be at risk of death after weeks of hypothyroidism and inadequate nutrition. Aden Hailu needs a Court order requiring the St. Mary's Regional Medical Center to actively promote the implementation of all measures necessary for Aden's survival and neurological recovery, including, but not limited to, tracheostomy, gastrostomy, thyroid hormone, and proper nutrition to prevent death. These procedures can be done within two (2) day's time and then Aden can be moved out of the custody of St. Mary's Regional Medical Center within five (5) days.

26. Aden Hailu needs the following procedures done:

a. Samples for lab tests (maybe some serum samples can be frozen for future non-STAT tests).

b. Serum T3, T4, and TSH.

c. Serum insulin-like growth factor I (IGF-I) to evaluate growth hormone deficiency.

d. Parathormone (PTH) and 25(OH)D3 to evaluate vitamin D deficiency and replacement.

e. Electrolytes (sodium, chloride, potassium, magnesium, total and ionized calcium), creatinine and BUN.

f. Continued monitoring of blood gases.

g. Serum albumin and protein levels.

h. CBC including WBC with differential and platelet count.

i. Urinalysis (including quantitative urine culture and 24-hour urine protein).

j. Chest x-Ray.

k. Vital signs.

l. Accurate Intake and Output.

m. Diet with 40 g of protein per day (nasoenterically or nasogastrically).

n. IV fluids (volume and composition to be changed according to daily serum levels of electrolytes (sodium, chloride, potassium, magnesium, total and ionized calcium) and fluid balance.

o. Water nasoenterically or nasogastrically if necessary to treat hypernatremia – volume and frequency according to serum sodium.

p. Levothyroxine 100 mcg nasoenterically or nasogastrically every 6 hours in the first day, then 50 mcg nasoenterically or nasogastrically every 6 hours.

q. Fludrocortisone Acetate (Florinef®) Tablets USP, 0.1 mg - one tablet (nasoenterically or nasogastrically) per day;

r. Prednisone 10 mg (nasoenterically or nasogastrically) twice per day;

s. Vasopressin IM, or Desmopressin acetate nasal spray (DDAVP – synthetic vasopressin analogue) one or two times per day according to urinary output;

t. Human growth hormone (somatropin) [0.006 mg/kg/day (150 pounds = 68 kg □ 0.4 mg per day)] subcutaneously;

u. Arginine Alpha Ketoglutarate (AAKG) powder 10 g diluted in water (nasoenterically or nasogastrically) four times per day;

v. Pyridoxal-phosphate ("coenzymated B6", PLP) - sublingual administration four times per day;

w. Taurine 2 g diluted in water (nasoenterically or nasogastrically) four times per day;

x. Cholecalciferol 30.000 IU three times per day (nasoenterically or nasogastrically) for 3 days. Then 7.000 IU three times per day (nasoenterically or nasogastrically) from day 4.

y. Riboflavin 20 mg four times per day (nasoenterically or nasogastrically)

z. Folic acid 5 mg two times per day (nasoenterically or nasogastrically).

aa. Vitamin B12 1,000 mcg once per day (nasoenterically or nasogastrically).

bb. Concentrate / mercury-free omega-3 (DHA / EPA) 3 cc four times per day (nasoenterically or nasogastrically).

cc. Chest physiotherapy

dd. Blood gases; adjust ventilator accordingly.

ee. Keep oxygen saturation 92-98%

ff. Air mattress that cycles and rotates air.

gg. Pressor agents to keep BP at 100-120/60-80.

26. In a situation such as this where continued provision of life-sustaining measures such as ventilator, medications, water and nutrition are at issue, it is my professional judgment that the decision regarding their appropriateness rests with the family, not the medical profession.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct except as to those facts based on information and belief, and as to those facts I am informed and believe them to be true.

DATED: June 30, 2015

Paul Byrne, M.D.

References to some of those who have recovered after a declaration of "brain death":

Joffe, A. Brain Death is Not Death: A Critique of the Concept, Criterion, and Tests of Brain Death. Reviews in the Neurosciences, 20, 187-198 (2009), and
References that "brain death" is not true death include: Rix, 1990; McCullagh, 1993; Evans, 1994; Jones, 1995; Watanabe, 1997; Cranford, 1998; Potts et al., 2000; Taylor, 1997; Reuter, 2001; Lock, 2002; Byrne and Weaver, 2004; Zamperetti et al., 2004; de Mattei, 2006; Joffe, 2007; Truog, 2007; Karakatsanis, 2008; Verheijde et al., 2009. Even the President's Council on Bioethics (2008), in its white paper, has rejected "brain death" as true death.
Zack Dunlap from Oklahoma. Doctors said he was dead, and a transplant team was ready to take his organs — until a young man came back to life
http://www.msnbc.msn.com/id/23768436/;http://www.lifesitenews.com/ldn/2008/mar/08032709.html, March 2008
Rae Kupferschmidt: http://www.lifesitenews.com/ldn/2008/feb/08021508.html, February 2008.
Frenchman began breathing on own as docs prepared to harvest his organs
www.msnbc.msn.com/id/25081786
Australian woman survives "brain death" http://www.lifesitenews.com/news/brain-dead-woman-recovers-after-husband-refuses-to-withdraw-life-support UTM source=LifeSiteNews.com+Daily+Newsletter&utm_campaign=231fd2c2c9-LifeSiteNews_com_US_Headlines05_12_2011&utm_medium=email
Val Thomas from West Virginia
WOMAN WAKES AFTER HEART STOPPED, RIGOR MORTIS SET IN
http://www.foxnews.com/story/0,2933,357463,00.html
http://www.lifesitenews.com/ldn/2008/may/08052709.html, May 2008.
An unconscious man almost dissected alive:
http://www.lifesitenews.com/ldn/2008/jun/08061308.html, June 2008
Gloria Cruz: http://www.lifesitenews.com/news/brain-dead-woman-recovers-after-husband-refuses-to-withdraw-life-support/,May 2011
Madeleine Gauron: http://www.lifesitenews.com/news/brain-dead-quebec-woman-wakes-up-after-family-refuses-organ-donation,July 2011

INDEX OF EXHIBITS

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1	Thyroid function test results	1

EXHIBIT 1

EXHIBIT 1

Paul A. Byrne, M.D.
577 Bridgewater Drive
Oregon, Ohio 43616
(419) 698-8844
e-mail:pbyrne@toast.net
June 22, 2015

To whom it may concern:

The results of test of thyroid function of Aden Hailu in early June are:

Thyroid screen: T3: 37 (Normal 71-180) [VERY LOW]
T4: 3.2 (Normal 4.8-13.9) [VERY LOW]
TSH 0.694 (normal 0.358-3.74)

Aden's brain (hypothalamus) is producing TSH, thyroid stimulating hormone, which has a half-life of only a few minutes. Therefore, her brain tissue is alive and receiving enough blood supply to remain alive as well as to release TSH, thyroid stimulating hormone, into the hypothalamus-hypophysis portal circulation, so that TSH remains detectable in the general circulation. If image scans are not sensitive enough to detect hypothalamic circulation known to exist, they are not sensitive enough to detect circulation in any other part of Aden's brain. Other parts of the brain may be only functionally silent (due to the lack of higher levels of energy they need to work compared to the level of energy that hypothalamic cells require to produce TSH) but still functionally recoverable if proper treatment is given.

First conclusion: image scans are useless to confirm irreversible damage to the whole brain.

Second conclusion: if hypothalamus is working, her hypothalamus, which is part of Aden's brain is alive and the criteria, the legal concept of "whole brain death," is not fulfilled.

Third conclusion: because TSH is not produced in sufficient amounts, T4 is low and brain edema is turned into brain myxedema. If T4 is given, brain circulation can only increase and resume normal levels, thereby restoring normal neurological and hypothalamic function.

Paul A. Byrne MD

Paul A. Byrne, M.D.,FAAP
Clinical Professor of Pediatrics- - - - - - -

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Jacqueline Bryant
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Transaction # 5026639 : mcholico

EXHIBIT 2

EXHIBIT 2

CASE NO. CV15-01172 **TITLE: FANUEL GABREYES and METSIHATE ASFAW, as Permanent Guardians of ADEN HAILU VS. ST. MARY'S REGIONAL MEDICAL CENTER and PRIME HEALTHCARE SERVICES**

FILED
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2015-06-29 12:39:58 PM
Jacqueline Bryant
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Transaction # 5021828

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONT'D TO
6/18/15. HONORABLE CONNIE STEINHEIMER DEPT. NO.4 M. Stone (Clerk) J. Schonlau (Reporter)	**EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER** Permanent Guardian Fanuel Gabreyes present with counsel Calvin Dunlap, Esq., and Monique Laxalt, Esq. Representative Tammy Evans present on behalf of Defendants St. Mary's Regional Medical Center and Prime Healthcare Services. Court noted receipt of Emergency Motion for Temporary Restraining Order. Counsel Dunlap advised the Court of the background of case. Motion for Temporary Restraining Order of a period of 3 weeks by counsel Dunlap; presented argument; and objection and argument presented by counsel Peterson. Discussion ensued regarding the Guardianship case and contact with the Guardianship Court. Based on request of counsel Laxalt and no objection by counsel Peterson, **COURT ENTERED ORDER** renaming the motion to a Complaint for Temporary Restraining Order. Based on agreement of counsel, **COURT ENTERED ORDER** allowing the Defendants to answer the complaint orally at this hearing. 3:25 p.m. Court recessed. 3:40 p.m. Court reconvened in chambers with respective counsel present. Discussion ensued regarding the Hospital's position in this case and the Plaintiff's need to receive an independent examination of Aden Hailu. Discussion also ensued regarding the appropriate avenue for this motion is through the Guardianship Court. Counsel Peterson advised the Court that the Defendants would stipulate to maintain life-sustaining services for a period of 1 week in order for the Plaintiffs to retain an independent Neurologist. Counsel Dunlap and Laxalt advised the Court of the difficulties thus far in retaining a Neurologist to do such examination. 5:10 p.m. Court recessed. 5:25 p.m. Court reconvened with respective counsel and parties present. Counsel Peterson set forth the following stipulation reached amongst the parties: The Defendants would maintain all current life-sustaining services until July 2, 2015 at 5:00 p.m. in order for the Plaintiff's to have an independent examination of Aden Hailu; thereafter, any further request for continued life-sustaining services must be requested through the Guardianship Court; if on July 2, 2015, it is determined that Aden Hailu is legally and clinically deceased, the hospital shall proceed as they see fit; and the instant Complaint for Temporary Restraining Order shall be dismissed. Permanent Guardian Gabreyes advised the Court that he understood the scope of the stipulation. Representative Evans advised the Court that the Defendants are bond by the above stipulation. Based on the above stipulation of counsel, **COURT ORDERED** complaint for Temporary Restraining Order dismissed. 5:35 p.m. Court recessed.	

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EXHIBIT 3

EXHIBIT 3

CODE NO.
THE O'MARA LAW FIRM, P.C.
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Attorneys for Fanuel Gebreyes

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

IN THE MATTER OF THE GUARDIANSHIP OVER THE PERSON AND ESTATE OF, ADEN HAILU, An Adult Ward.	Case No. GR15-00125 Dept. No. 12
FANUEL GEBREYES, Petitioner, vs. PRIME HEALTHCARE SERVICES, LLC, dba ST, MARY'S REGIONAL MEDICAL CENTER, Respondent.	

DECLARATION OF FANUEL GEBREYES IN SUPPORT OF PETITION FOR ORDER AUTHORIZING MEDICAL TREATMENT, RESTRAINING ORDER AND PERMANENT INJUNCTION

(Nev. Rev. Stat. §§ 159.1998(3); 449.626; 449.628)

Declarant, Fanuel Gebreyes, states under penalty of perjury:

1. I have personal knowledge of all the facts contained herein and if called to testify as a witness I would and could competently testify thereto.

2. Aden Hailu, the patient in these proceedings, is my daughter. I am also her legally appointed guardian, along with her cousin, Metsihate Asfaw.

3. My daughter has always taken excellent care of her health. She followed all the doctor's recommendations regarding her health.

4. My daughter's health has been excellent other than anemia for which she received blood transfusion approximately 2 years ago.

5. My daughter has always been willing to endure the treatment in order to fight disease, including blood transfusion.

6. On April 1, 2015 Aden developed abdominal pain and fever. She went to the emergency room. She was admitted to the hospital. Dr. Chu operated on her. At the end of the procedure Aden's blood pressure went down. Aden has been on a ventilator since that time.

7. Saint Mary's Regional Medical Center has determined to remove my daughter's ventilator.

8. My niece and I have done our best by our ward over the past ten weeks. We have been at the hospital daily and as much as the hospital would allow.

9. Against my clearly expressed wishes on at least four (4) occasions, the hospital performed an apnea test on my daughter, and used the results to declare her "brain dead." In making this determination, they ignored my repeated no, no, no to this test.

10. I know that the apnea test involved taking away the ventilator that supports Aden's breathing. This did not help her. The apnea test could only have harmed her. Thus, I said no to the apnea test. The hospital and staff withdrew the ventilator for ten (10) minutes according to the medical records and when you consider a normal human being in good health takes a breath 10-15 times per minute, in my opinion, these actions have caused additional damage to my daughter.

11. The ventilator is helping her breathe by pushing air into her lungs. Aden is able to exhale on her own. Aden's lungs are functioning and able to pick up oxygen and get rid of carbon dioxide.

12. I have personally observed that my daughter body is functionally able to heal minor abrasions, meaning that her circulatory system and other organs including her heart, her liver, her kidneys, her spleen, her pancreas and her entire being are functioning.

13. The ventilator, medications, nutrition and water, are protecting and preserving my daughter's life. They are necessary for Aden to live. Without them, she will die. I realize that Aden is seriously ill and that she will not live on earth forever. I want her to live the lifespan given to her by her Creator. I do not want anyone to shorten her life or hasten her death. Yes, I prefer for Aden to be living at home.

14. On June 2 two doctors told me the ventilator would be removed in 2 weeks. We rejected and objected to this. This will force death on Aden.

15. We have been put under tremendous pressure to remove the ventilator. Hospital employees repeatedly inform us that Aden would be better off dead and that Aden would not want to be living like this. We believe that Aden wants to live and it is not in her best interest, nor of her family to have death imposed on her.

16. The hospital told us they would no longer treat my daughter if we refused to follow their recommendations and remove the ventilator. We were told we would have time to find another facility for treatment, but such has not been the case. We have not had sufficient time, nor have we had assistance in obtaining care for Aden. Further, we were told on May 2 that no hospital will accept Aden as a transferred patient. However, if the doctors and staff perform a tracheostomy and gastrostomy, then she can be moved to our home. However, she must first receive thyroid hormone treatment, wait two (2) days and then the procedures can be performed. Each procedure takes approximately one-half (½) hour.

17. My daughter cannot speak for herself at this time. I have every reason to believe Aden would want to live as long as she can. Aden would not want to shorten her own life and she would not want anyone to impose or force death upon her.

18. It is my belief that Aden is alive and should be cared for. A doctor or anyone else at Saint Mary's Regional Medical Center should not be able to force death upon her. Aden is a living human being and not a corpse.

19. If a restraining order is not issued, then, and in that event, my daughter, Aden Hailu, will die and irreversible harm will be done.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct except as to those facts based on information and belief, and as to those facts I am informed and believe them to be true.

DATED: June 30, 2015

Fanuel Gebreyes

036

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Jacqueline Bryant
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Transaction # 5028806 : yllloyd

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

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

IN THE MATTER OF THE GUARDIANSHIP OVER THE PERSON AND ESTATE OF, ADEN HAILU, An Adult Ward.,	Case No. GR15-00125 Dept. No. 12 **OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER**
FANUEL GEBREYES, Petitioner, vs. PRIME HEALTHCARE SERVICES, LLC dba ST. MARY'S REGIONAL MEDICAL CENTER, Respondent.	

Respondent Prime Healthcare Services Reno, LLC d/b/a St. Mary's Regional Medical Center ("St. Mary's"), by and through its undersigned counsel, Snell & Wilmer L.L.P., responds to the Motion for Temporary Restraining Order as follows:

///

///

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I. This Court Does Not Have Jurisdiction to Grant the Relief Requested.

The Motion for Temporary Restraining Order seeks a restraining order as well as mandatory relief. Petitioner requests that this Court issue an Order Restraining St. Mary's from removing Aden Hailu from her ventilator, and that it be ordered to give her thyroid hormone treatment as well as other treatment, perform a tracheostomy, and perform a gastrostomy. In short, petitioner seeks an order directing St. Mary's to perform medical procedures that St. Mary's and its physicians object to performing. The treatment "prescribed" by Doctor Byrne (who is neither a neurologist or licensed to practice in this state) and which he asks this court to order St. Mary's to administer, includes 33 separate items and procedures. *See* Declaration of Byrne attached to Emergency Motion at page 9-10. Apart from the fact that petitioner has cited no law whatsoever empowering any court to direct a hospital in the method and manner it should perform medical treatment, or withhold treatment, petitioner has asserted no "claim for relief" that would permit this court to grant such relief.

Nevada, like most states, enacted the Uniform Determination of Death Act. NRS 451.007. That Act provides that it is to be "applied and construed to carry out its general purpose which is to make uniform among the states which enact it the law regarding the determination of death." NRS 451.007(3). The Act provides that for legal and medical purposes, a person is dead if the person sustained an irreversible cessation of circulation or respiratory functions, **or** all functions of the person's entire brain, including his or her brain stem." NRS 451.007 (b) (emphasis added).

The Act does not create a regime where this medical determination is "adjudicated" in a court of law by a battle among experts, or by a jury of laymen. Instead, the law provides that the determination must be made "in accordance with accepted medical standards." NRS 451.007 (2). That is all that is required by science and the law, and that has been done. The statute has one and only one requirement, and that is a determination by accepted medical standards that circulation or respiratory function have ceased or that all of the functions of the person's entire brain, including his or her brain stem, have ceased. While it may seem counterintuitive to lawyers that

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such determination not be subject to the adversary process, that is precisely why the Uniform Act was enacted by almost all states in the United States.

The statutory scheme enacted in Nevada, and elsewhere, makes clear it is the hospital, not the family or the family's experts, that retains the right to determine whether to discontinue cardiopulmonary or other mechanical support. In adopting the Uniform Act, Nevada's legislature, as did the legislatures of all other states, recognized the need for a uniform determination of death by which hospitals can determine brain death notwithstanding advancements in medical technology, which makes possible the artificial prolongation of certain bodily functions with application of mechanical devices, such as heart and lung, in the absence of any actual brain function. Under the common law definition of death in various jurisdictions, a dead person on a mechanical ventilator would not be legally dead. That is one of the primary reasons the Uniform Action was enacted in jurisdictions in the United States. *See* e.g. *Camp v. Greenwich Hospital*, et. al., 116 F.Supp.2d 295 (D. Conn. 2000). *See also*, *Jones v. United States*, 1985 WL 3487 (W.D. Tex. 1985) (A person is legally dead if there is cessation of spontaneous respiratory and circulatory functions, but if artificial means of support preclude this determination a person is legally dead if in the announced opinion of a physician, based on ordinary standards of medical practice, there is irreversible cessation of all spontaneous brain function.). Petitioner in this case does not have the right to circumvent the normal process of discontinuation of life support measures with respect to a dead person, provided the hospital has established its burden under the law, which is to make a determination of death in accordance with accepted medical standards.

II. St. Mary's Determined Aden Hailu Is Dead In Accordance With Accepted Medical Standards.

In 1995 the American Academy of Neurologists (AAN) published practice parameters regarding the declaration of brain death. The techniques and tests performed by St. Mary's satisfy the AAN criteria (as will be demonstrated at the hearing) and are the medically accepted procedures for determining death. The hospital's determination of satisfying the requirement of the statute is final and conclusive.

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III. The Declaration of Byrne is Insufficient to Establish a Likelihood of Success on the Merits.

Despite its length and seemingly deliberate attempt to obscure by reference to abstruse medical lexicon and citation to acronyms without reference or explanation, the declaration of Dr. Byrne itself establishes relief is not available. The Declaration actually admits that the criteria established to satisfy the legal definition have been satisfied: *"The questions presented here refer to (1) the unreliability of methods that have been used to identify death," and (2) the fact that no therapeutic methods that would enable brain recovery have been used so far."* Declaration of Byrne at page 7 lines 11-13. These may be legitimate questions to be debated in medical journals or forums, but not in a court of law. The methods or standards required in a court of law are those that are *"medically accepted."* They do not have to satisfy Dr. Byrne's standards, and Dr. Byrne does not state, nor can he, that the methods employed by St. Mary's in making the determination of death were not *medically accepted.* Indeed Dr. Byrne's declaration makes the point as to why the Court should refrain from entering into this arena, and reinforces the reason why the Uniform Act was enacted in the first place, namely to prevent these types of debates from being adjudicated in a court of law, and limiting the court's inquiry to determining only whether the methods used to determine death are *"medically accepted."*

The second issue raised by Dr. Byrne *"the fact that no therapeutic methods that would enable recovery have been used so far"* is not relevant to any legal issue before this Court. Courts of law are not equipped to determine what experimental methodologies might be employed to restore life in a brain dead body. That lies within the realm of experimental science or science fiction (Mary Shelley and Oliver Sacks "Awakenings" notwithstanding). Again, the Court's inquiry under the Uniform Act is strictly limited to determining whether the "determination of death" by St. Mary's was made pursuant to medically accepted standards. Dr. Byrne's declaration otherwise establishes that the determination of death was consistent with the uniform act when he states, *"The diagnosis of 'brain death' is currently based on the occurrence of severe brain swelling unresponsive to current therapeutic methods." Declaration* page 78 lines 1-2. Dr. Byrne may disagree with the "*current methods*" employed by professionals, but all that is required under

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the law is that they be consistent with the Uniform Act, which again, is "currently accepted" standards.

None of the other suggestions Dr. Byrne makes in his Declaration are sufficient to justify legal relief because they are based on conjecture and hope, and non-scientific certainty, or even probability. *See e.g* as to the following:

(1) page 3 line 20-*21 "Our data suggest that maintaining normal levels of thyroxin during the early post traumatic phase of CNS (Central Nervous System) injury* <u>*could have*</u> *a therapeutically positive effect.*" A suggestion in data does not satisfy the requirements for medical opinion evidence *AND* the injury is not "early" (it occurred over 3 months ago);

(2) *"Several lines of evidence show that thyroid hormone is crucial to the response to stress and post stress recovery and repair...TH administration in almost every tissue resulted in tissue repair... This novel action* <u>*may*</u> *be of therapeutic relevance, and thyroid hormone* <u>*may*</u> *constitute a paradigm for pharmacologic-induced tissue repair/regeneration.*" Declaration page 3 lines 28 to page 4 line 4. This court cannot make legal determinations under the Designation of Death Act, based on *"novel actions of therapeutic relevance;"*

(3) *"Accumulating experimental evidence suggests that groups of neurons in the CNS might react to pathological insults by activating developmental-like programs for survival, regeneration and re-establishment of lost connections.' Declaration* page 4 line 8-10. Again, this court cannot make determinations under the Act based on *"accumulating experimental evidence;"*

(4) *"In this review we provide an overview of the post traumatic changes in these signaling systems and discuss the potential significance of their interactions for the development of novel therapeutic strategies." Id.* at page 4 lines 21-23. These discussions need to take place in scientific journals and forums, but they do not constitute evidence of brain death or the absence of brain death under currently *"medically accepted standards."* They have no place in this courtroom;

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(5) *"Other parts of the brain may be only functionally silent." Declaration* page 5 lines 7-8. Functional silence means the functions are not active or perceptible which constitutes a "cessation" of function, or at least perceptible function, which satisfies the definition of death under the statute,

(6) *"If Aden is disconnected from the ventilator she likely would be unable to breathe on her own because of the duration of time she has been on the ventilator." Id.* at page 5 lines 24-26. The statute provides that a person is dead if the person has sustained an irreversible cessation of circulatory and respiratory function." NRS.451.007 (1)(a). Dr. Byrne has here himself conceded that the definition of death has been satisfied;

(7) *"With proper medical treatment Aden ... may possibly regain consciousness." Id* at page 6 line 1-4. The court does not dwell in the realm of possibilities;

(8) *"Patients in a condition similar to Aden's clinical state may indeed achieve total or partial neurological recovery even after having fulfilled the criteria of brain death legally accepted in the state of Nevada, or established anywhere in the world, provided they receive treatments based on recent scientific findings,* ***although not yet commonly incorporated into medical practice."*** *Id* at page 6 lines 9-13. Here, Dr. Byrne again concedes that the legal criteria have been satisfied. His quarrel is rather with current medical practice, which this court is bound to apply;

(9) *"The criteria for brain death are multiple and there is no consensus as to which set of criteria to use." Id* at page 6 line 14-15. Again, Dr. Byrne misses the point. A consensus is not required. All that is legally required is that the determination be based on *"accepted medical standards;"*

(10) *"The latest scientific reports indicate that patients deemed to be brain dead are actually neurologically recoverable."* The Court is not the place to discuss or debate the latest scientific reports or whether patients are neurologically recoverable. The court is limited to determining whether the patient is *"deemed"*

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brain dead based on acceptable medical standards. Here, Dr. Byrne concedes that the definition and standard have been satisfied.

IV. The Elements for Granting a TRO Cannot Be Established

An applicant for a Temporary Restraining Order must establish: (1) that immediate and irreparable harm will result if the relief requested is not granted; (2) that the applicant is likely to succeed on the merits of its claim or action; (3) whether the applicant has an adequate remedy at law; (4) that the balance of hardships tilts in his or her favor; and (4) the public interest. *See* Moores Federal Practice Section 65.36[4] at pages 65-89 to 65-90. The purpose of a TRO is also to maintain the status quo during the pendency of the action, at least until the court can hear the matter on preliminary injunction. *Id.* Petitioner seeks much more than maintaining the status quo in this motion. It seeks to have the court compel St. Mary's to institute a treatment regime that is not only contraindicated by accepted medical standards, but to many people, outrageous and immoral.

Petitioner cannot establish a likelihood of success on the merits of the action or claim because it has not even initiated an action or stated any claim. Furthermore, even if the court were to rule otherwise, the evidence has established, or will establish, that Aden Hailu is already dead, and therefore cannot sustain any immediate or irreparable harm from disconnecting life support measures. The removal of life support from a dead person cannot in law or logic constitute irreparable harm.

Petitioner cannot establish a likelihood of success on the merits because the papers filed on Hailu's behalf establish that she is legally dead. Her custodian only quarrels with the manner in which that determination was made, but at the same time concedes that the determination was made in accordance with the terms of the statute, namely by employing and applying *"accepted medical standards*." The custodian's quarrel with the methodology and recommendations for extraordinary experimental treatment for a possible resurrection are legally insufficient, and in fact, legally irrelevant.

The balance of hardships all depends on the legal determination of death. If Hailu is legally dead (as she surely is) then the balance of hardships tilts heavily in favor of St. Mary's, for

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it will be compelled to administer useless life sustaining treatments to a dead person, which will be of no benefit to the dead person at all. In short, there is no hardship to a dead person for not administering life supporting treatments to the dead body, but there is a hardship on the hospital required to administer them in violation of the law, and its code of ethics, and ethical principles of morality held by licensed physicians.

The public interest also strongly favors St. Mary's because the public policy, as manifested in the Uniform Act is to eliminate and preclude these types of disputes and debates from being adjudicated and resolved in courtrooms. The legislature enacted the Uniform Act to deal with precisely the kind of situations presented in this case. To the extent the court declines to follow the Act in this respect, the court contravenes the important public policy consideration underlying the Act. Public policy is also manifested in the Dead Body Act, NRS 451.010 *et. seq.* which requires that "*every dead body of a human being lying within this state ...shall be decently buried or cremated within a reasonable time after death.*" NRS 451.020. This Act, coupled with the Uniform Determination of Death Act, manifests an important public policy of this state that after a determination of death has been made in accordance with acceptable medical standards, the body is to be promptly disposed of, and not subjected to protracted court proceedings initiated and maintained by a grieving family, unwilling to accept that legal determination. As noted above, it is for good reason that the law reposes that decision in the hospital and its doctors, not to the grieving family and a hired expert whose agenda is to challenge the prevailing science on the subject. That debate is not for the courtroom.

That the expert has such an agenda is manifested not only by his declaration, but the attached news and press articles demonstrating previous failed attempts to bring the debate into the courtroom. What is clear is that Dr. Byrne does not believe in brain death at all and believes that is is contrary to principles held by the Roman Catholic Faith that life begins at conception and ends only when our soul separates from the body. He also harbors a belief that the concept was concocted and conceived by a conspiracy of medical and health care capitalists for the purpose of vivisecting live bodies to request organs for transplant. Whatever moral, religious or philosophical principles we implicate in this debate, they should be debated in legislatures, and

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have no place in a courtroom where inquiry is must be limited to determining whether death is determined in accordance with "medically accepted standards."

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the proceeding document does not contain the social security number of any person.

Dated: July 2, 2015

SNELL & WILMER L.L.P.

By:/s/ William E. Peterson
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Janine C. Prupas, No. 9156
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Reno, Nevada 89501

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

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER** by the method indicated:

_____ by Court's CM/ECF Program

_____ by U.S. Mail

_____ by Facsimile Transmission

_____ by Overnight Mail

_____ by Federal Express

__XX__ by Electronic Service

_____ by Hand Delivery

and addressed to the following:

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

Attorney for Plaintiff

DATED: July 2, 2015

/s/ Dawn Calhoun
An Employee of Snell & Wilmer LLP

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EXHIBIT LIST

1.	SFGATE article	6 pgs
2.	Life Site Article	6 pgs
3.	Stories from the trauma bay article	11 pgs
4.	"Jahi McMath, can you move?" article	5 pgs
5.	Life Guardian article	12 pgs
6	"Execution in a New York hospital" article	5 pgs
7.	"Jahi is alive – praise the Lord and pass the ammunition" article	4 pgs
8.	Dr. Paul Byrne's Refutation Article	17 pgs
9.	About Dr. Byrne website page	2 pgs

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EXHIBIT 1

EXHIBIT 1

SFGATE http://www.sfgate.com/bayarea/article/Judge-rules-against-brain-dead-girl-s-family-5091298.php

Judge rules against brain-dead girl's family

By Carolyn Jones and Bob Egelko Updated 6:32 pm, Tuesday, December 24, 2013

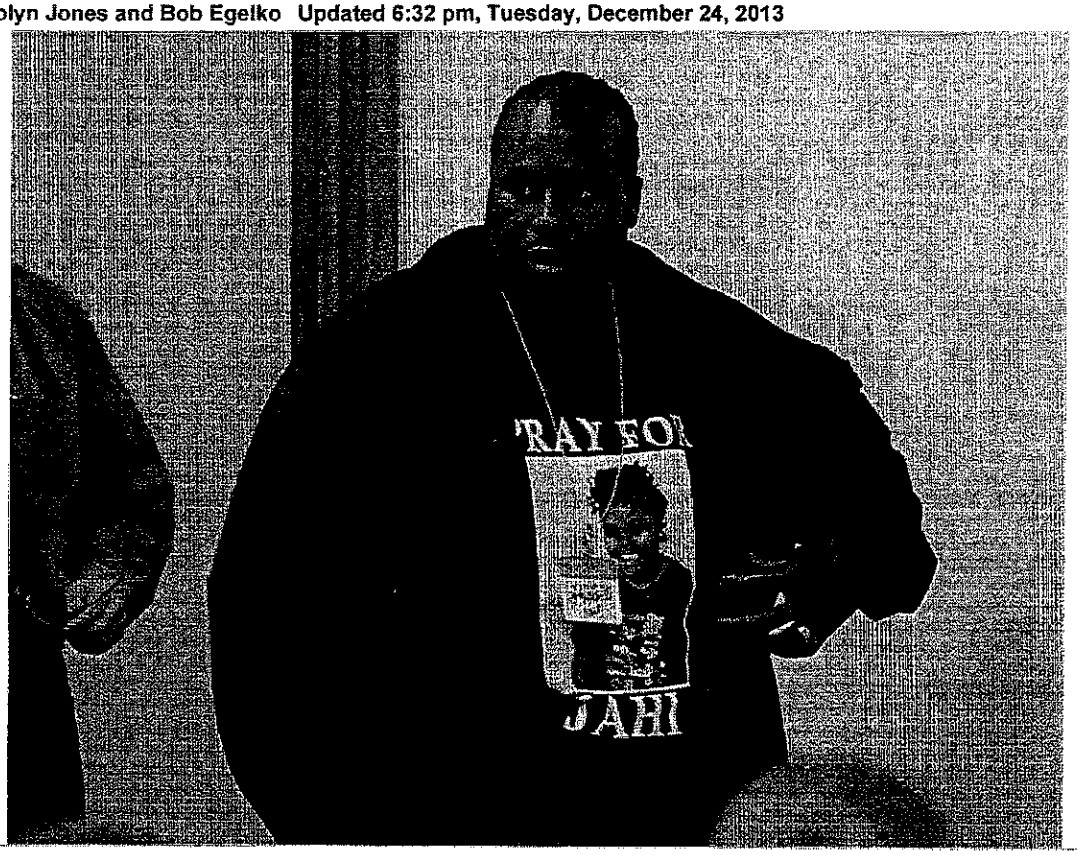

IMAGE 1 OF 14

Martin Winkfield arrives for a hearing in Alameda County Superior Court to determine the condition of his 13-year-old stepdaughter Jahi McMath in Oakland, Calif. on Tuesday, Dec. 24, 2013. McMath was determined to be clinically brain dead following complications from a routine tonsillectomy at Children's Hospital in Oakland. Dr. Paul Fisher, chief of pediatric neurology at Lucile Packard Children's Hospital, concurred that Jahi meets all the criteria of brain death.

An Alameda County judge declined Tuesday to force Children's Hospital Oakland to continue providing medical care to a 13-year-old girl whom physicians declared brain-dead nearly two weeks ago after tonsil-removal surgery.

But Jahi McMath will remain on a breathing machine for the time being, as Judge Evelio Grillo kept in place a restraining order until 5 p.m. Monday, giving the girl's family an opportunity to take its case to a higher court.

The judge ruled after a court-appointed doctor - Paul Fisher, chief of neurology at Lucile Packard Children's Hospital at Stanford - examined Jahi and testified that she is legally brain-dead and cannot recover any brain function.

Jahi's mother, Nailah Winkfield, has said she believes Jahi can recover, that God may "spark her brain awake," and that she should have control over all medical decisions involving her daughter.

Speaking to the mother and other family members in a small Oakland courtroom, Grillo said, "I hope you can find some comfort in your religion and the love of your family, so you may get through this. God bless you."

Family's struggle

After the hearing, family members said they had not yet decided whether to seek a different result at the First District Court of Appeal in San Francisco. They said they would spend Christmas Eve at Jahi's bedside, wrapping presents.

"Its heartbreaking, but our faith is still strong," said Omari Sealey, the girl's uncle. "We still have her through the 30th. There's still hope for a miracle."

An attorney for Children's Hospital, Douglas Straus, said the facility extended "extreme sympathy" to the family.

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"Our sincere hope," he said, "is that the family finds peace with the judge's decision that Jahi is deceased."

Doctors at the hospital declared the girl brain-dead on Dec. 12, three days after she had surgery to deal with sleep apnea.

The hospital said Jahi's tonsils and adenoids were removed, along with excess tissue from her throat and nose. The girl's family said that she seemed fine coming out of surgery but that blood started

coming out of her nose and mouth, and she went into cardiac arrest. They accused the hospital of not responding quickly enough to the bleeding.

On Thursday, Children's Hospital told the girl's family it intended to withdraw the ventilator, prompting the family to obtain the restraining order.

Attorneys for the hospital cited California law, which states that doctors must make a "determination of death" if a person sustains "irreversible cessation of all functions of the entire brain."

Brain-death consensus

The law requires that a hospital provide families with a "reasonably brief period of accommodation" between a finding of brain death and the discontinuing of mechanical support, giving relatives a chance to gather at the patient's bedside.

The Oakland case has raised end-of-life issues that courts in California have wrestled with for years.

The state Supreme Court ruled in 1993, over state officials' objections, that a mentally competent prisoner could refuse life-sustaining food and medication. Eight years later, in anther contentious case, the court refused to let a woman withdraw life support from her terminally ill husband, who was conscious but could no longer express his views.

But legal and medical commentators largely agree that on one issue, the law is clear: Once doctors do a proper examination and find brain death, the person is legally dead.

At that point, "a body is being maintained on a ventilator," said David Magnus, a Stanford medical professor and director of the university's Center for Biomedical Ethics. "This is not a patient on life support. This is a patient who has passed away."

Experience with coma

There remains "a lot of turmoil about the definition of death and whether the brain is or is not functioning," said Marjorie Shultz, a retired UC Berkeley professor of health law and medical ethics who had her own harrowing encounter with the system 18 years ago, when her 19-year-old son's car was struck head-on by a wrong-way driver.

Her son lay in a coma for a month and spent the next three months in what doctors described as a vegetative state, while "we were told over and over there was no hope for him," Shultz said. She insisted on continuing his medical care, and her son now lives on his own and has bachelor's and master's degrees, she said.

"I had the unpleasant experience of not being able to believe doctors and having to fight like hell against judgments that were made prematurely," Shultz said.

But if doctors, using established criteria, make a finding of brain death, she said, "the law takes the position that there isn't anything to argue about, that the person is dead."

Most states agree

Almost every state has a similar law.

The definitive California ruling on brain death was issued in 1983 by a state appellate court in the case of parents who sued to keep a hospital from removing a ventilator from their brain-dead child, who suffered lethal seizures in his third week of life, apparently after parental abuse.

"Parents do not lose all control once their child is determined brain-dead," the court said. "The parent should have and is accorded the right to be fully informed of the child's condition and the right to participate in a decision of removing the life-support devices."

But, the justices said, "once brain death has been determined, by medical diagnosis ... or by judicial determination, no criminal or civil liability will result from disconnecting the life-support devices."

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EXHIBIT 2

EXHIBIT 2

END OF LIFE
Fri Dec 20, 2013 - 7:55 pm EST

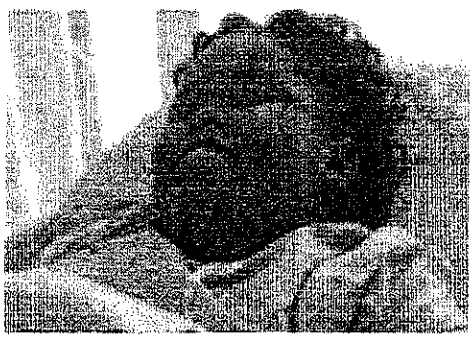
'She's very much a living person': Doctor champions 13-yr-old 'brain dead' girl on ventilator

Peter Baklinski

OAKLAND, CA, December 20, 2013 (LifeSiteNews.com) – A pioneer doctor in neonatology is championing the life of a 13-year-old girl from California who was officially declared "brain dead" by doctors after a routine tonsillectomy last week went horribly wrong.

"The first thing about 'brain death' is that brain death is not true death. It never was and never will be," said Dr. Paul Byrne, a pioneer neonatologist and clinical professor of pediatrics at the University of Toledo to LifeSiteNews.com.

"This girl is still very much a living person. Her life ought to be protected and preserved. No one should be hastening her death or shortening her life," he said.



Tonsillectomy is a common surgery. Jahi McMath's December 9 surgery was recommended by doctors to allegedly address the her sleep apnea. While the surgery at first appeared to be successful, the girl began coughing up blood before suffering cardiac arrest. Doctors declared her brain-dead December 12.

The McMath family is seeking a court injunction today through their lawyer that would prevent doctors at the Children's Hospital in Oakland from taking their daughter Jahi off life-support, despite doctors allegedly telling the family that she is "dead, dead, dead, dead."

But Jahi's mother Nailah believes that her daughter is not truly dead.

055

"I feel her. I can feel my daughter. I just kind of feel like maybe she's trapped inside her own body. She wants to scream out and tell me something," she told the *San Francisco Chronicle*.

Jahi's uncle Omari Sealey agrees: "She's still warm. I can feel her presence, I can still feel her smile," he told KGO-TV.

Byrne said that it should be "obvious to everyone," not just the girl's relatives, that she is still alive.

"Her heart is beating, she has circulation, she has respiration, her immune mechanisms are intact, and I'm sure she is healing from her tonsillectomy. Healing happens in only a living person."

"These are facts of life, [indicating] that this girl is a living person and that she's not dead," he said.

Byrne explained that someone does not "become dead" because a doctor declares someone 'brain dead', "although they intend it that way", he added.

He explained that the brain dead criteria was "invented" in 1968 by an ad hoc Committee of the Harvard Medical School openly seeking a way to harvest organs for transplanting. Since a dead organ taken from a corpse cannot be successfully transplanted into a living body, the committee settled on a definition of death that would allow the harvest of healthy living organs from a still living body that lacked signs of brain activity.

"Brain death was invented, conjured, made-up to get organ transplants," he said.

Declaring someone 'brain dead' to harvest organs is always to the detriment of the patient, Byrne explained. "No one can recover once they've had their beating heart and other organs cut out."

"If doctors can, they will take this young girl's organs."

Byrne said it's a common misconception that a machine, such as a ventilator, gives a person life. The machine only sustains an already existing life.

In a case like Jahi's, the ventilator "only moves the air into a living person. It does not move the air out."

"The air comes out become the person is alive," he said.

"The machine supports the vital activities of respiration and circulation, but it does not give life. The life comes from God and from no place else. What doctors [are supposed to] do is protect and preserve the life that's there," he said.

The girl's family is waging a legal battle to keep their daughter on a ventilator and to have doctors insert a feeding tube into her.

"I want her on as long as possible, because I really believe that God will wake her up," the mother said. The family held a prayer vigil on Wednesday night for their daughter's recovery.

The family is keeping constant vigil at their girl's bedside, fearing that doctors might pull the plugs without their knowledge or consent.

The doctors know that the law favors whatever decision they make. California law states that "a person who is declared brain dead is legally and physiologically dead." According to the law, Jahi is dead.

Byrne said that only New York and New Jersey have a conscience clause that offers specific protections to a patient declared 'brain dead' whose primary caregiver does not hold cessation of brain activity as true death. "In the other 48 states, there is nothing in their laws to give any kind of protection to the person declared brain dead."

"All of the laws — and I mean all of them — all revolve around getting organs," he said.

The hospital administration is asking the family permission to release details that they say will "provide transparency, openness and provide answers to the public about this situation."

"We implore the family to allow the hospital to openly discuss what has occurred and to give us the necessary legal permission—which it has been withholding—that would bring clarity, and we believe, some measure of closure and deeper understanding of this medical case," said Dr. David Durand, chief of pediatrics, in a statement.

Click "like" if you are PRO-LIFE!

Many people posting online comments underneath Jahi's story carried by various media agree with the doctors that it's time for "closure".

"I'm so sorry for this family. The problem is that they don't seem to understand that no one 'wakes up' or recovers from brain death. It's not like being in a coma, where there is still brain activity. The brain is dead; she can't come back," wrote one.

"Despite the pain they are going through the realization is this: She is clinically brain dead. When the brain stops, everything else stops as well. The life support machine is not going to bring her back to life," wrote another.

"Legal brain death is 100% of never coming back, She is a corpse and the human life in her is 100% gone," wrote yet another.

But LifeSiteNews.com has reported on numerous stories of people declared 'brain dead' by doctors and who have unexpectedly recovered.

Here are incidents from the past five years:

- July 2013 - A New York woman who was pronounced 'brain dead' by doctors unexpectedly awoke just as her organs were about to be removed for transplant.
- October 2012 - A documentary titled "*Pigen der ikke ville dø*" ("The girl who refused to die"), aired on Danish TV, telling the story of 19-year-old Carina Melchior, who awoke after doctors declared her "brain dead" and had approached the family about considering donating her organs.
- April 2012 - Doctors declared british teen Stephen Thorpe "brain dead," telling the father that the boy would never recover from a serious car accident. Despite pressure from the doctors, the father would not consent to allow the boy's organs to be donated. With the help of other doctors, five weeks later Thorpe left the hospital, having almost completely recovered.
- July 2011 - Madeleine Gauron, a Quebec woman — identified as viable for organ donation after doctors diagnosed her as "brain dead" — surprised her family and physicians when she recovered from a coma, opened her eyes, and began eating.
- May 2011 - An Australian woman declared "brain dead" regained consciousness after family fought for weeks doctor recommendations that her ventilator be shut off.
- February 2008 - 65-year-old Raleane Kupferschmidt was taken home to die after relatives were told by doctors that she was "brain dead" from a massive cerebral hemorrhage. The family had already begun to grieve and plan for her funeral when she suddenly awoke and was rushed back to hospital.
- March 2008 - In one particularly chilling case, 21-year-old Zack Dunlap, who was declared "brain dead" following an ATV accident, recounted how he remembers hearing doctors discussing harvesting his organs. Zack showed signs of life only moments before he was scheduled to be wheeled into the operating theater to have his organs removed. One of Zack's relatives provoked the reaction by digging a pocketknife under his fingernail.
- May 2008 - A Virginia family was shocked but relieved when their mother, Val Thomas, woke up after doctors declared her 'brain dead'. Doctors had not detected

brain waves for more than 17 hours, but kept the woman breathing on a respirator. The family were discussing organ donation options for their mother when she suddenly woke up and started speaking to nurses.

- June 2008 - A Parisian whose organs were about to be removed by doctors after he had "died" of a heart attack, revived on the operating table only minutes before doctors were to begin harvesting his organs.

Dr. Byrne said that with California's permissive "brain death" laws, the most important thing people can do is pray.

"Pray for this child, for this family," he said.

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EXHIBIT 3

EXHIBIT 3

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Stories from the trauma bay

Stories about general surgery, trauma surgery, dumb patients, dumb doctors, and dumb shit from the dumb world around us.

Tuesday, 31 December 2013

Misinformation

As a father and a physician, my last post about Jahi McMath was the most difficult I have ever written. I've been following her tragic story since it was first brought to my attention, and it still is not quite over. As opposed to the last post, writing this one was one of the easiest.

One thing that pisses me off more than almost anything else is the willful propagation of misinformation. The Internet is a wonderful treasure trove of information, and a wealth of information on any subject imaginable is only a few keystrokes away thanks to the magic of Google (fuck you, Bing). But the downside is that false information is just as readily available, and people are just as liable to believe it.

The more I read about Jahi McMath, the more upset I become. Not so much about how the family is handling the situation, though I believe they are handling it exceedingly poorly. Not so much how their lawyer Christopher Dolan (aka Scummy McDouchebag) is making himself sound like a clueless jackass and attention-whore, though he obviously is ("It is our position that no doctor determination can end a life without parental consent", he stupidly said). No, what bothers me the most is that in spite of the fact that six different doctors confirmed that little Jahi has died, the family wanted a **7th** opinion. And the seventh opinion they wanted was from Paul A. Byrne, MD.

If you haven't heard of Dr. Byrne, you're about to be educated on just how blinded by faith a supposed man of science can become.

Dr. Byrne is an American neonatologist and pediatrician from St. Louis, Missouri. He is past-president of the Catholic Medical Association and an avid opponent of the entire concept of brain death, and he is vehemently opposed to organ transplantation. Despite the stance of the vast majority of the medical community, Dr. Byrne does not believe brain death even exists - "it has become clear that 'brain death' is not true death" he wrote in August, 2011 [1]. In that story he makes several references, including quoting his own article from The Journal of the American Medical Association as if it were someone else's work. That's red flag #1: quoting yourself. Tsk tsk, Paul. The second red flag, arguably much bigger, is that one of his other references is *www.lifesitenews.com*, a site which was started by anti-abortion zealots and which is anti-homosexual, anti-contraception, anti-stem cell research, and anti-anything-that-isn't-strictly-Catholic. They state on their website, "*LifeSiteNews gives priority to pro-life, pro-family commenters and reserves the right to edit or remove comments.*"

Riiiight. Not exactly a respected scientific outfit there, Pauly.

The third (and biggest) red flag is that Dr. Byrne posts his commentary on www.renewamerica.com, an ultra-conservative website started as support for a radical whack-job. His arguments against the concept of brain death are so ridiculous they could almost be considered comical. The only reason it's not funny is that **people actually believe him**.

People have known for hundreds of years that the brain is where the person actually lives, not the heart. The other organs (heart, lungs, intestines, spleen, liver,

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  - October (9)

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pancreas, etc) merely support the brain. This is not subjective, conjecture, or opinion, this is fact. People can live normally without a spleen. People can live without kidneys (on dialysis). People can live with a failed liver for months while waiting for a transplant (Yes Paul, a transplant). People can even live without intestines (on IV nutrition). And people can live without a heart - the first artificial heart was implanted in 1982, and people can now live for months with artificial pumps circulating their blood while waiting for a heart transplant.

But you *can not* live without a brain. This is a very simple fact, one that is taught on Day 1 of medical school, and one that Dr. Byrne and his followers consistently and stubbornly and ridiculously fail to acknowledge.

Death is defined as either 1) the complete cessation of biologic function or 2) the irreversible loss of brain function. Without the brain, there is no life. Death by #1 is no less dead than death by #2. But Dr. Byrne states that "Death is separation of the soul from the body." That one line speaks volumes - this doctor, this purported man of science, defines death *religiously* rather than *physiologically*. Dr. Byrne also likes to use misdirection to further his lies:

> "Since there are two definitions of death (cardiac death and brain death), it is clear that either is enough to be called deceased. If there are 2, Jahi must not be dead by the other method, or she would have been, or could have been declared dead by the other one."

No, Dr. Byrne. It doesn't work that way. Brain dead is just as dead as cardiac dead.

Dr. Byrne also seems to have completely forgotten his basic physiology. I'm sure he learned in medical school, just as I did, that the lungs and heart both function independently of the brain. The heart can still beat and the lungs can still ventilate (move air in and out) and respirate (exchange oxygen for carbon dioxide) without input from the brain. But Dr. Byrne incorrectly says, "After true death chest compressions or a ventilator can only move air; there cannot be respiration, because respiration is a function of a living human body." This is patently false - respiration is a function of functional lungs, NOT of a living body. Lungs simply do not require a brain to do their job.

Think that's bad? Oh but wait, it only gets worse:

> "So-called 'brain death' or 'cardiac/circulatory death' are terms concocted by transplant physicians and their allies who wanted to enlarge the donor pool by including patients who are really not dead in the traditional sense of the word."

Another fabricated lie by the good doctor, a preposterous conspiracy theory that transplant surgeons, who wish only to give their patients a new chance at life, hover like vultures, waiting to rip organs out of unsuspecting victims, like grave robbers in the 1800's. The concept of brain death as death was advanced by the Harvard Medical School in the 1960's to differentiate brain death from a persistent vegitative state as the possibility of organ transplantation was becoming a reality. Brain death was *not remotely* a new concept, but at the time it had to be more strictly defined so ethical lines would not be crossed. It was transformed into law in the United States in 1981 as the Uniform Determination of Death Act, which was supported by the American Medical Association and the American Bar Association (probably the only time in human history when doctors and lawyers have agreed on anything). The Australian definition of brain death is identical. "Brain stem death" in the UK is a similar concept. In fact, when you look at the worldwide view, brain death is universally accepted, and there was universal agreement on the neurologic examination in diagnosing brain death, though the exact criteria vary from country to country [2].

I've spent the past week following this entire story and reading comments from other readers. It is astounding just how many people are convinced Jahi is alive because her heart is pumping, and that she will miraculously wake up. Several of

- September (8)
- August (7)
- July (6)
- June (7)
- May (8)
- April (9)
- March (6)
- February (5)
- January (3)
- 2012 (88)
- 2011 (33)

About Me

DocBastard

I am a trauma and general surgeon at two hospitals in the suburbs of a major metropolitan area. One of the hospitals is in a rather poor suburb, the other is in a very affluent suburb. I see all kinds of crazy shit at both. Feel free to email me at docbastard1@gmail.com if you have questions, comments, or stories you want me to publish. Yes, I'll give you credit. Don't be afraid to comment or email me. I appreciate both!

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them reference other people who have been diagnosed (obviously misdiagnosed) as brain dead who have woken up. However, after an exhaustive search of the medical literature, I can find exactly zero documented cases of someone whose brain is actually devoid of blood flow and function coming back to life. Brain dead is NOT THE SAME as a coma or a persistent vegitative state.

Our job as doctors is to help patients get better, but part of our job is also to educate our patients and their families. Spreading false information based on lies is dangerous and completely against the purpose and spirit of medicine. *Brain dead is dead,* despite what Dr. Byrne and Jahi's family choose to believe.

You may choose not to believe in science all you like. It doesn't make it any less correct.

If you'd like to read Dr. Byrne's complete ridiculous column, make sure you're sitting down, and prepare to be completely exasperated. Ready? Go.

1. http://www.renewamerica.com/columns/byrne/110818

2. Brain death worldwide: accepted fact but no global consensus in diagnostic criteria. Neurology. 2002 Jan 8;58(1):20-5.

Posted by DocBastard at 02:07

+1 Recommend this on Google

37 comments:

Joshua Gomez 31 December 2013 at 04:30

Doc how did Jahi die from a tonsillectomy? I thought it was a low risk procedure. Oh and a judge has extended life support care until January 7th

Reply

Amore93 31 December 2013 at 04:59

She didn't die from a tonsillectomy. She had a lot of surgeries being performed at once, ranging from tonsillectomy to surgery on her sinuses. Jahi also had a lot of health problems related to her obesity. She went from surgery to a pediatric ICU which shows that the family and doctors both knew her surgery and recovery were risky. I had a tonsillectomy when I was 11 and I went home the same day. However, no surgery is without risk which is why you have to sign so many waivers. Poor Jahi died from post surgical complications, she had been up and laughing a few minutes before. It is a sad situation all the way around.

Reply

Freezy Pop 31 December 2013 at 05:55

I like how when you click on Bing, it still redirects you to Google heh.

Reply

ASL_HeartandSoul 31 December 2013 at 06:23

I copied DocB's earlier reference to the type of surgeries Jahi had (abbreviated UPPP) and adenoidectomy on Google. I came up with a very informative PDF describing the procedures that might be done to treat obstructive sleep apnea, which Jahi had, and the risk factors, which she also had. there is potential for complications and it is possible to die of the complications.

Reply

ASL_HeartandSoul 31 December 2013 at 06:25

here it is: http://www.uvm.edu/medicine/surgery/documents/Snoring_and_OSA2.pdf

Reply

ondřej hataš 31 December 2013 at 13:37

Thank you very much for this.

Reply

Sari Everna 31 December 2013 at 13:59

You keep stressing the difference between brain death and coma/vegetative state. You might consider giving us laymen an overview of what makes them different, how they tell which a person has, and such. After all, to the average person, they look pretty much the same. How you tell the difference would be quite interesting, and quite relevant to this particular story.

Reply

Replies

Simon Haro 1 January 2014 at 16:54

I agree. You should enlighten us on the matter, Doc.

Reply

MissWinter 31 December 2013 at 17:16

While in a coma the person has brain activity and a chance to wake up. When brain dead the brain activity has ceased and the person is just a shell whose brain stem (which is separate from the brain itself) makes the heart pump and the lungs breath. The person who has no brain activity will not recover. Period. The comatose patient has a chance to recover. In my opinion I see a coma as a way for the body to shut itself down to minimal use to allow optimal healing internally.

Reply

Replies

crystalwolflady 1 January 2014 at 01:32

Right now there is a race car driver (forget his name) who got traumatic brain injury while skiing and he is in a "induced coma" to help his brain heal. Way different that Jahi's situation. The family is not "getting it".

Reply

Rikki Bo 31 December 2013 at 17:22

I'd like to add to your comment about a doctor's job being helping patients get better. I believe that a doctor's job is also to help a patient die with dignity when it is time. I experienced this with my dad last year. There was an option for a complicated, risky surgery with only a small chance of success (and poor quality of life). The other option wad a comfortable death with his family around him. The doctors and nurses were open about the risks, which I appreciated. There was no false hope. I'm happy he only lasted about 16 hours after palliative care began.

In addition to the lack of understanding related to the different types of death, there is a pervasive fear of death by so many people.

Reply

crystalwolflady 1 January 2014 at 01:04

More bizarre by the minute! The situation is FUBAR: "Jahi McMath: Hospital fights in court to remove brain-dead girl from ventilator"
http://bit.ly/18WMW5X

Reply

crystalwolflady 1 January 2014 at 02:16

The mother is crazy "However, in her petition for an emergency stay in the state court of appeal, Winkfield contends that the act violates her freedom of religion and privacy under the California Constitution."

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What? her "freedom of religion"? Her "privacy"? As she holds pressors....everyday....!
http://lat.ms/1hdK1sI
"Jahi McMath's mother: 'How can you possibly say my child is dead?'"
CHO should have the coroner take possession of the body. There is NO place in NYC or just send her home and let the parents "rent a vent" and take care of her. I feel for the other parents and children at CHO having to endure this "three ring circus". How does a family tell SIX Drs. they are WRONG? Where's the video of her moving? This is insane. How long are they going to let this go on? Question for the Doc... if Jahi has another cardiac episode or something else, are there DNR orders? Or is the hospital obligated to "save a already deceased person"? Thanks.

Reply

Replies

DocBastard 1 January 2014 at 16:05

I haven't the slightest idea if there is a DNR in place, but I strongly suspect the family would never allow it. And legally the hospital is only supposed to keep her on the ventilator. They still have no obligation (legally, ethically, or otherwise) to give any other treatment to a deceased patient. This is why they are not giving her any nutrition other than IV fluids. So I would bet that if she had another cardiac arrest, they would not do CPR.

This is mere conjecture, since the family is still preventing the hospital from releasing any actual information, and all information we have has been severely skewed by their twisted interpretation of events.

crystalwolflady 1 January 2014 at 19:24

Thanks Doc!

Reply

Psu DoNym 1 January 2014 at 08:25

I feel like a real dick saying this, but the first stage of grief is denial. If denial has a way to be sustained, it will continue indefinitely, as long as the hospital can legally keep her on life support. As terrible as it is for anyone to say, she is dead. The parents are only keeping her alive for their own good. Also, do you have any idea WTF went wrong with what was supposed to be a routine tonsillectomy?

Reply

Replies

DocBastard 1 January 2014 at 16:07

From what I understand, it was not just a routine tonsillectomy. It was a combination of three operations - adenotonsillectomy, uvulopalatopharyngoplasty, and resection of the inferior turbinates. Bleeding after such surgeries is common, but it is rarely life-threatening. Since the family refuses to allow the hospital to give any specifics about the case, I have no idea what actually happened.

crystalwolflady 1 January 2014 at 19:29

The family keeps saying a "Routine" sx and the news is also perpetuating lies by saying she is in a "vegetative state" and comparing her to Teri Shavio (of which the parents have hooked up with those grifters) and that is the Facility in NY she is supposed to go to that is a outpatient place?
The whole thing is insane. I wonder how long this can go on?
Oh reading comments from all over someone mentioned she may have had a "undisclosed bleeding problem" but didn't give a link.

crystalwolflady 2 January 2014 at 16:34

Its getting worse since she hooked up with the Shavio grifters... "McMath tragedy used for shameless fundraising" - SFGate - http://s.shr.le/1hXsIcM

cholleyman 8 January 2014 at 00:58

I don't have a link either (as I don't remember where I read it), but I did read a comment from someone who claimed to have been at the scene when Jahi died. Naturally, I don't know how much weight to put upon the comment except to consider it as a possible explanation for Jahi's death. The commenter said the bleeding was normal after the operations, but Jahi choked on a blood clot. The stress of the choking caused the heart attack. She was given CPR, but the choking had prevented the brain to receive oxygen which caused the cessation of the brain to work. The brain tissues died without oxygen. Even though the respiration and heart function can be kept operating by machines, the brain is dead as well as the brain stem. Just think of what happens to a foot that has had the blood flow cut off from it. Tissues will die and the foot will require amputation.

Reply

Holly 2 January 2014 at 03:54

Thanks for the warning that Dr. Byrne's article would be completely exasperating; I couldn't even finish reading it. It's astounding to read so many comments around the web written by people who have no understanding of physiology or the medical system. The facts will come out, and I appreciate your keeping us up to date with information as you discover it. I hope this family will come to terms with their loss and let her body go with dignity. Especially if her brain does begin to breakdown (as you were discussing in your comments on the previous post).

Reply

Replies

crystalwolflady 2 January 2014 at 16:47

Exactly! Many of the comments are from people who are none medical or pretty non educated and want to say Jahi is in a PVS instead of braindead. This case is going to inspire new laws for hospitals I'm sure to either not use the vent or only use it in cases or organ donation. This family is despicable slamming the hospital all over the place. Now the mother is also demanding a tube be inserted b/c her daughter is "starving"...!
The courts are slow and they are not Drs.!

Reply

jack mac 2 January 2014 at 05:53

It is a sad thing. Sadly the family cannot understand that if someone is brain dead they cannot come back currently(Maybe in the future hopefully we can develop a way)
I assume it could be possible for misdiagnosis to happen but ti has been 7 times so far so I really doubt it is a misdiagnosis. To be fair this sort of thing has happened before http://www.dailymail.co.uk/health/article-2134346/Steven-Thorpe-Teenager-declared-brain-dead-FOUR-doctors-makes-miracle-recovery.html but that was four times 7 is much more so I doubt they are missing anything.

Reply

Replies

julie 2 January 2014 at 19:18

I just read this article, and it says that the patient was in a chemically induced coma. I'm speculating that it was probably done to help the swelling in his brain from the car accident. Also the doctors also said he had "extensive brain damage"—but didn't say that he was brain dead. Interesting article. As with Ms. McMath's case, I would LOVE to read these patient's charts to see how these events happened.

Reply

066

Psu DoNym 2 January 2014 at 08:55

Just read the column. Website is a pile of shit, Dr. Byrne's head is also most likely full of shit.

Reply

Marianne 2 January 2014 at 14:00

Dr.Byrne's 15 minutes are over. He needs to stop now. He's giving this family false hope and it's just wrong. The mother is in denial. I won't judge her as I'm not walking in her shoes. This fruit loop Byrnes..... Disgusting!

Reply

julie 2 January 2014 at 19:06

As a mother, this situation as me torn up, and I ache for this family. As a nurse practitioner, however, I am disgusted at the misinformation that is being spread about this patient. As a commenter mentioned above, it has indeed turned into a "three ring circus". And the willful ignorance and hope of that "doctors" like Byrnes (how does this man have a license to practice medicine?) feeds to this family is abhorrent. Having worked with terminal cancer patients, I truly believe that giving families false hope is the CRUELEST thing that a medical provider can do. Not only is this child dead, but eventually her heart will stop, and what will her family do then?
Sorry for the rant--I've been following this story since the beginning, and it upsets me quite a lot; both for the family, and for the hospital.
For those that wanted a layman's difference between coma, vegetative state, and brain death, here is a link from "How Stuff Works",that has some nice pictures and definitions. http://science.howstuffworks.com/life/inside-the-mind/human-brain/brain-death2.htm

Click on the link for "coma" on the second page for more information about how a coma is different from a vegetative state.
The third page has an excellent description of how physicians assess neurological function in brain dead patient.
This is where the case aggravates me; if a physician (you don't need SIX) assesses a patient and discovers these findings, that patient is DEAD. There is NO coming back. Ever. That the physiology of how the brain works.

I hope this is helpful--J

Reply

Replies

crystalwolflady 3 January 2014 at 17:26

That is a excellent link thank you.... tweeted out to Try to educate people...if that is possible...

Reply

Cathie 2 January 2014 at 20:33

Almost every article referring to Dr. Byrne identifies him as a "Catholic doctor." However, he apparently didn't get the memo that the Roman Catholic Church recognizes "brain death," referred to in Church documents as "determination of death by neurological criteria." Pope John Paul II endorsed this (and organ donation) in a speech on 8/29/2000. See section 5: http://www.vatican.va/holy_father/john_paul_ii/speeches/2000/jul-sep/documents/hf_jp-ii_spe_20000829_transplants_en.html

The National Catholic Bioethics Center has a FAQ on the matter: http://www.nbcenter.org/page.aspx?pid=1285

Dr. Byrne's nonsense has needlessly contributed to the suffering of this family and the general confusion around these matters.
And I'm really annoyed about that!!

Reply

067

HoodRat 7 January 2014 at 03:02

She's my cousin, and trust me everybody talkin about how we gonna sue, now that I read this, I guess jahi is dead. Sad man...

Reply

Replies

Anonymous 31 July 2014 at 07:34

Is Jahi Really your cousin? Her mother is a nutcase.

Reply

Jim Phillips 7 January 2014 at 22:39

"CaliGirl9":
"I am afraid that thousands of previous cases of brain dead/brain stem death sadly prove that what has happened to Jahi is not reversible. All of the anecdotal "I know someone who woke up" probably did NOT receive a diagnosis of brain death via exams, imaging and EEGs and the opinion of three board-certified neurologists. This sets a dangerous precedent in medicine. How can anyone believe that at least three doctors wanted to pronounce Jahi dead? I am sure they were looking for the tiniest spark. The next time this happens—and no doubt somewhere someone has been declared brain dead today—is it a healthy thing for a family to deny the inevitable? So now we have people telling doctors how to practice, even if it is a futile treatment like a gastrostomy tube, which will turn into feces in Jahi's gut, eventually causing skin breakdown because stool will leak and there is simply no way medical staff can stand around waiting for the next ooze to clean it up. She is not receiving any medication keeping her unconscious. Because her cerebral cortex is liquefying, it's likely there will be more reflex arc movements. Google Lazarus reflex video. Her heart beats because hearts don't need brains in order to beat, they need lungs oxygenating them. What if, when her internal organs breakdown her body develops a bleeding disorder called Disseminated Intravascular Coagulation? She will bleed from every orifice and every pore and it will not be stoppable. Her body temperature will decrease, her blood pressure will decrease, having a negative effect on her kidneys and heart. Her lungs will fill with fluid, there will be cardiac arrhythmias, and diabetes insipidus which will result in high serum sodium and dehydration. Jahi will not feel a thing. Her mother will remember all of it. Did you watch the video? Does the idea of keeping this child's mortal remains on earth long enough to see her brain liquefy sound good? The family is unleashing some horrific memories of Jahi on themselves by continuing to deny that she is deceased. Her organs WILL fail and it will be very distressing to watch.

Reply

Anne Joseph 8 January 2014 at 00:20

I thought this video from YouTube was very informative. http://www.youtube.com/watch?v=Ffqz-vKZO5Q

Reply

Mark Mailhot 3 May 2015 at 10:29

I heard Dr. Byrne speak about 6 years ago and thought he was off base in his criticism of "brain death." However I just heard him speak again and am convinced. There is no universal way of determining "brain death" and in fact, some people who have been declared "brain dead" have come back to life. Jahi McMath herself is showing purposeful movement, demonstrating that she did not die.

Reply

Replies

DocBastard 13 May 2015 at 21:02

No, no one in the history of mankind who was correctly diagnosed as brain dead has ever come back to life. Ever. It is physically impossible. When brain tissue dies, it is dead and cannot regenerate. Full stop.

Her "purposeful movement" has not been repeated. The videos that were circulating a few months ago prove nothing, only that her limbs are

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moving (which is a normal reflexive movement after brain death). If she actually was moving purposefully, it would be very easy to prove. The fact that no new videos have come out since then tells me everything.

Anonymous 22 May 2015 at 14:21

To Mark M,

It appears you were thinking more clearly six years ago. ;)
As for you saying -"There is no universal way of determining 'brain death'..."
That can be refuted with this source in the Health & Medicine website- "The concept that death can be defined as the irreversible cessation of brain functions is universally recognized in the world through statutes, judicial decisions, or regulations."
DocBastard informed you that NO ONE has ever come back to life after being correctly diagnosed as brain dead. I don't know why non-medical ones think that they know more about medicine than the professionals. Their favorite saying is "Doctors don't know everything...many times doctors can be wrong..mother's always know best."
I wonder if they follow their own words of ignorance by treating themselves when it comes to medical emergencies, or giving their "expert" opinions to others on how to treat their illnesses or medical conditions.
I thought that by now, most brain functioning adults would comprehend that brain death = dead= 100% dead. No ifs ands or buts about it.
What makes YOU think and claim that Jahi is making "purposeful movement??"
If you're referring to the {non-revealing} 15 seconds of video clippage that was "released" in Oct., that right there just goes to show how some folks were sold snake oil and bought into the Pyramid schemes.
Mark, FYI- that video was filmed back in Dec. 2013 at CHO. The family thought of it as proof that Jahi was alive and would prohibit CHO from disconnecting the vent. Their favorite slogan "Keep Jahi on life support."
Obviously when the video was shown to legitimate medical professionals, back in Dec. of 2013, it didn't prove a damn thing then, and the sudden "earth shattering" news {resurrection} in Oct. 2014, proved plenty to the savvy ones. ;)

DocBastard, I immensely enjoy your brains, humor, and blog!

A fan- Shelly L.

Reply

Anonymous 23 June 2015 at 05:07

What is life, and what is death? I am baffled by the arrogance on all sides. Life is a mystery. A 14 year old girl is breathing with the aid of a respirator, and is continuing life processes like menstruation, and is growing., and continuing to comfort her family with her 'aliveness' Is she actually alive? The mother who gave birth to her, has hope. The doctors who tried their best to render medical services to her, think not. Someone has to pay for all of this care "in-between", and someone has to be held accountable for the harm that befell a sweet, loving child who was overweight and had sleep apnea and sought treatment. Someone wanted to harvest her organs--no doubt, with the best of intentions--but was this right, given the circumstances? Complicating all of this are the ridiculous, insensitive trolls—where the heck do these idiots come from???

Reply

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That sinking feeling
"Ok everyone, put your books away. I am giving you all a pop quiz. I hope you studied chapter 6 like I told you to yesterday!" W...

Jahi McMath - Here we go again
NOTE: If you haven't heard of Jahi McMath's story, you can read about it here . I go into more details here , here , here , and ...

Jahi McMath FAQ
Repetition as a concept is bad. Repeated repetition is worse. Add ignorance, stupidity, blind faith, half-truths, or outright lies to the r...

Jahi McMath update...sort of
NOTE: If you have not heard the story of Jahi McMath, I've posted several updates including her full story here , here , here , and here...

Jahi McMath
If you're looking for insults, you won't find them here. Not this time. This story is too sad, and I can't even bring myself t...

Misinformation
As a father and a physician, my last post about Jahi McMath was the most difficult I have ever written. I've been following her tragic...

Brain death and organ transplantation Mythbusters
Whenever I watch Mythbusters , I think how great I would be as a cast member. It would be perfect - I love busting myths, I think Adam Sava...

Fuck you, Justin Bieber
I know in my last post I promised a stupid story about me, but this takes precedence. The post about me is written, but it will have to wa...

Jahi McMath Misconceptions and Twitter
Up until a few weeks ago, I thought Twitter was the stupidest idea ever. Microblogging? Really?? Think about it, what can you really say ...

REALLY?
I'm not that garrulous a guy, but it still takes a lot to render me speechless. I typically have an answer for anything a patient may a...

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EXHIBIT 4

RenewAmerica

February 1, 2014

Jahi McMath, can you move?

Paul A. Byrne, M.D.

By Paul A. Byrne, M.D.

A video recording of an ice cube touched to the foot of Jahi McMath has been distributed. Someone, perhaps Jahi's mother, says, "I don't understand how a 'brain-dead' can . . ."

I suspect the same or a similar comment would be made by anyone who sees the recording, except a neurologist who participates in the declaration of "brain death."

A neurologist is legally free to declare "brain death" in accord with any of many "accepted medical standards." Jahi was declared "brain dead" in accord with the standard accepted by the neurologists in California. Did a neurologist apply an ice cube to the bottom of Jahi's foot? No. The neurologists, I suspect, would respond that ice cube to the foot is not part of their examination. Furthermore, they would provide a reason for not including it. I could predict their response, but someday they will probably provide their own.

The first set of neurological criteria known as the Harvard Criteria was published in 1968. By 1978, 30 disparate sets of criteria were published. Thus, a patient could fulfill one set of criteria, but be very much alive by the other 29. In 2008 it was published that there was no consensus as to which set of criteria to use. In 2010 it was published that the criteria were not evidenced-based. In response to the conclusion of "no consensus" and "not evidenced-based," another set of no consensus, not evidenced-based criteria was published. For those outside of medicine, this is not the usual way to make advances in medicine.

The public must be wondering how Jahi could be dead, and respond by moving her foot when an ice-cube is applied 3 weeks later. Does anyone believe that a cadaver's foot could move? No, Jahi is not in a morgue and she is not under the care of a mortician.

Let's try to understand a few basics about life and death. The following can be applied to Jahi or

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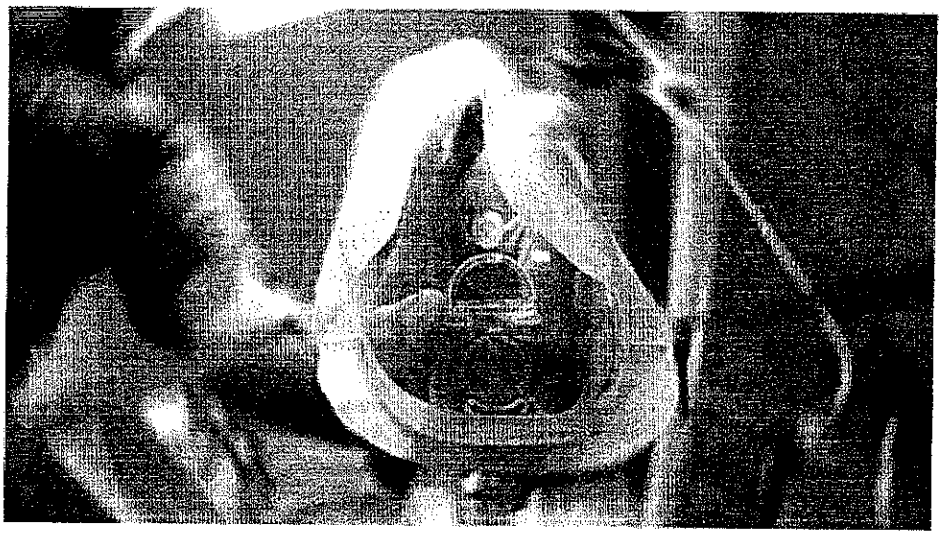
anyone. Life of a human person on earth is a continuum from true conception until true death. The term, human person, includes human being, zygote, embryo, fetus, newborn, infant, child, kid, boy, girl, man, and/or woman. We are aware of our own existence and we can see other individual living persons.

For life on earth, each person takes in oxygen, water and nutrients. Carbon dioxide is exhaled and waste products are passed in urine and stool.

The living body is composed of cells, tissues and organs organized according to functions as eleven systems. An interdependent functional relationship among cells, tissues, organs and systems maintain the unity of the body, which is a soul-body unity, a life-body unity. The respiratory, circulatory and central nervous system are vital systems. Without the functioning activities of these three vital systems, life on earth will end quickly. Vital signs of a living person are temperature different from that of the environment, respiration, heartbeat and blood pressure.



Ventilation and respiration are required for life on earth. Ventilation is movement of air; respiration is exchange of oxygen and carbon dioxide occurring in the lungs and via circulation in all tissues of the living person. During normal breathing muscles of the chest and diaphragm contract to draw air with oxygen into the lungs. Elastic recoil of lungs and chest wall causes the air with carbon dioxide to go out.

If breathing and circulation stop, chest compressions must be initiated quickly for life on earth to continue. Chest compressions can push air out of airways. Then, elastic recoil of chest and lungs causes air to go into the lungs. In addition, a machine called a ventilator can push air in. Elastic recoil of chest and lugs then pushes the air out.

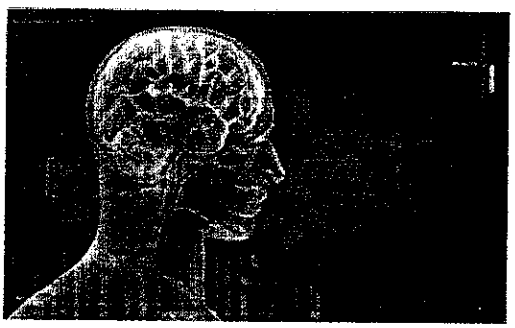
A ventilator is commonly mislabeled a respirator. After true death, neither chest compressions nor a ventilator can be effective. Air can be pushed into the airways and lungs. Elastic recoil might push air out for a few cycles, but then elasticity is gone and air cannot get out. After true death there cannot be circulation and respiration. Chest compressions and a ventilator can support vital respiration only in a living person, not a cadaver.

The heart beats without impulses from the brain in everyone. Heartbeat is intrinsic to the heart. The heart has its own nerves that initiate and continue the electrical impulse that causes heart muscle to contract. The heart has within its nervous system sensors that stop the contraction.

Respiration, circulation, water and nutrition are required for life on earth. When these decrease, the body conserves. E.g., when there is lack oxygen, metabolism switches from aerobic to anaerobic. Anaerobic metabolism is much less efficient, but it is part of natural life-preserving processes.

Without respiration and circulation, health of the person deteriorates and death can and will occur unless breathing and circulation are restored quickly. This deterioration is manifest in cessation of vital activities and the structural changes of disintegration, dissolution and destruction of cells and tissues of organs and systems. These changes can be detected first at the microscopic level, but eventually in death, they become evident as decay, decomposition and putrefaction. After true death, chest compressions or a ventilator can only move air; there cannot be respiration, because respiration is a function of a living human person. Contrariwise, if such efforts at ventilation and respiration are successful, this can be only because soul-body unity is present, i.e., because the person is still living, not dead. Respiration, circulation and heartbeat can occur only in a living person, not a cadaver.

Death is the absence of life from the body. After true death (Latin: *mors vera*) changes in the remains are manifest as disintegration, dissolution, lysis, destruction, corruption, decay, and/or putrefaction. These are pathological changes, not biological, rather it is lack of biology.

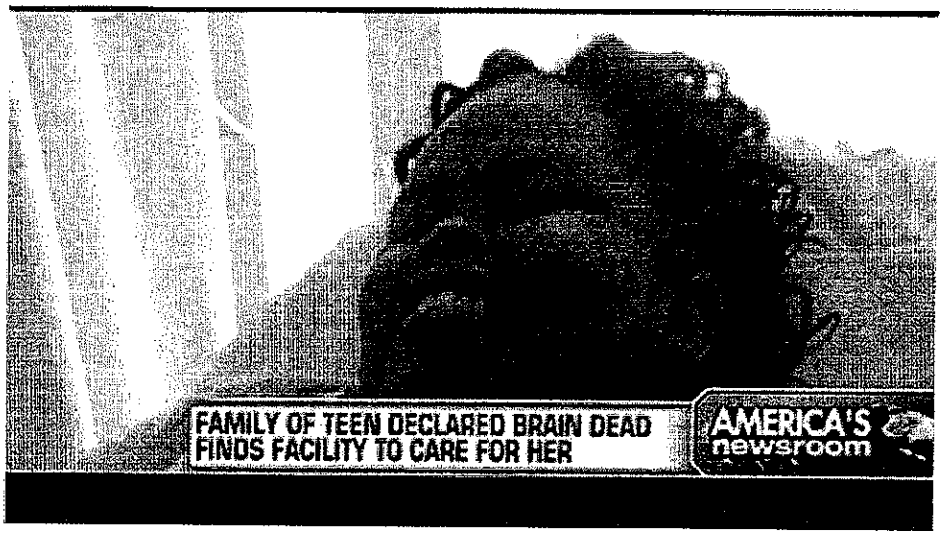


Prior to true death patients are sometimes labeled "as good as dead," "soon to be dead," "brain dead," "cardiac dead," "probably dead," "apparently dead," etc., especially when there is interest to convert such patients into organ donors. None of these patients with heartbeat, respiration and/or circulation can rightly be called a cadaver or corpse. If "probably dead" or "apparently dead" (*mors apparens*) is applied to a person who is not truly dead, he will certainly be truly dead when the beating heart is cut out. Cutting out the beating heart from any person so described imposes death, in other words, kills the person. To take action that will cause death based on probability is a violation of justice.

After life is absent from the body, the remains is called a cadaver, a corpse, a dead body. The moment of separation of soul from the body is the moment of true death (Latin: *mors vera*) and therefore the moment when a human body changes from a living body to a dead body, a corpse, a cadaver (Latin: *cadaver*). The human cadaver, a corpse, a dead body is thus changed only because it is no longer part of the life-body (soul-body) unity of the living person. When dead, therefore, the body must be significantly changed. Such significant change at first is at the microscopic and/or gross levels of pathology manifest by absence of functioning and structural alteration, sufficient that the life-body unity no longer exists. After death these pathologic changes continue. They cannot be stopped;

only slowed or delayed by cooling, embalming, mummifying, salting, etc.

How much change must be manifest before a declaration of death is made? For the sake of justice to protect living persons like Jahi, you and me: No one ought to be declared dead unless respiratory and circulatory systems and the entire brain have been destroyed. Such destruction shall be determined in accord with universally accepted standards. This is solidly based medically and unexceptionable ethically and religiously (*Gonzaga Law Review* 1982/83; 18(3):429-516, p.515 in Potts M, Byrne PA, and Nilges RG, Beyond Brain Death, Philosophy and Medicine 66, Klewer Academic Publishers, 2000; p.72).



Fr. Peter Fehlner, F.I., S.T.D.and I have studied extensively the teachings of the Catholic Church. Basic biology, physiology and pathology indicate a clear difference between life and true death. This brief statement has been applied to Jahi to provide guidance to help understand these serious matters.

See: www.lifeguardianfoundation.org for more information

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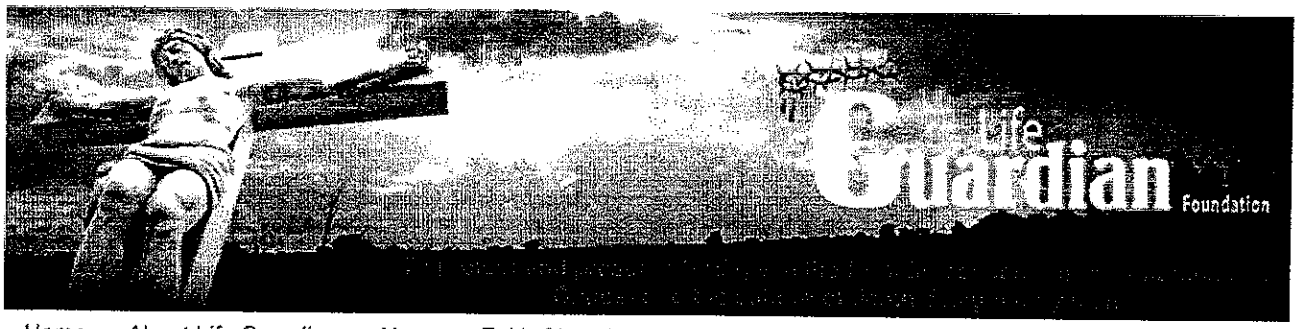

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Life Guardian Foundation is an organization founded and dedicated to educate the public that life of the human person is a gift. Respect is owed to every human person regardless of their state of health throughout their entire lifespan from conception until his or her natural end.
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Your "refusal" for organ donation must be documented.

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Document your decision of "refusal" for organ donation, make known your wishes to have your life protected and preserved and ensure, that in the event that you cannot speak for yourself, your family and loved ones will speak on your behalf. It is a matter of life and death

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Yes, I would like to order the Directions to Protect and Preserve Life including the OPT-OUT card download for a donation of $2.00 each (click here to be taken to our digital download page).

CRITICAL INFORMATION CONCERNING "BRAIN DEATH" AND ORGAN TRANSPLANTATION

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Finis Vitae, 'Is "brain death" true death? are the Proceedings of the "The Signs of Death" symposium conducted at the Pontifical Academy of Sciences (PAS), February 3-4, 2005, which occurred at the specific request of His Holiness Pope John Paul II. Pope John Paul II's message to the participants was very clear: "Each human being, in fact, is alive precisely in so far as he or she is '*corpore et anima unus*', (body and soul united) and he or she remains so for as long as this substantial unity-in-totality subsists." This book must be read by every physician, priest, minister, emergency medical personnel, every parent and every teenager before any consideration of the issues surrounding organ transplantation.

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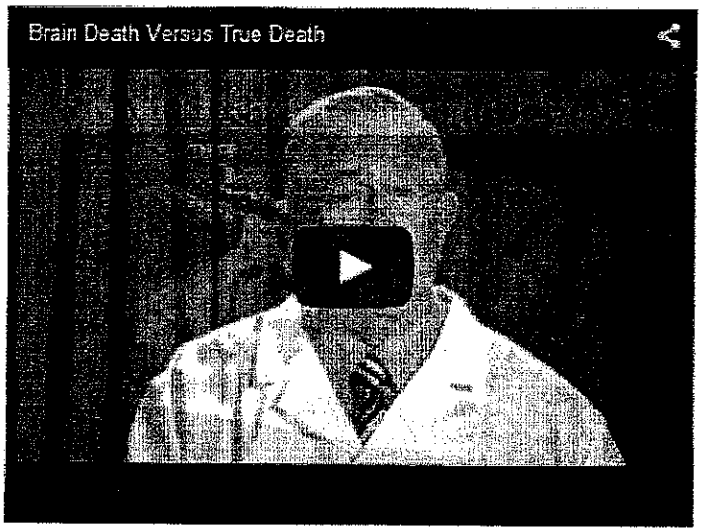
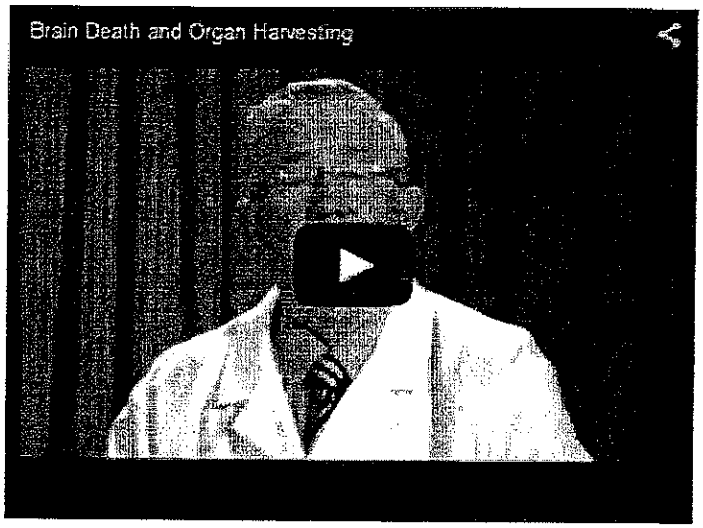

Brain Death Versus True Death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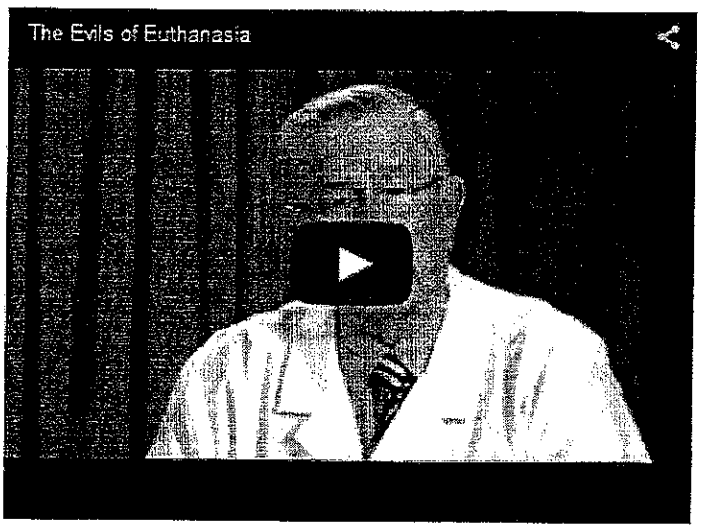
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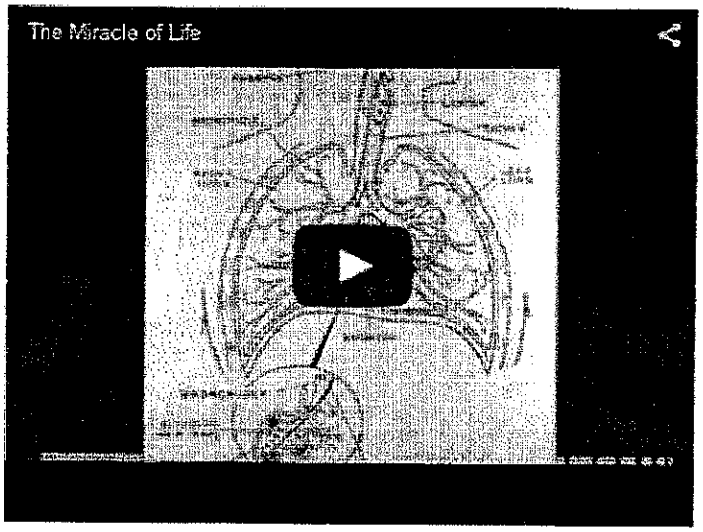

Click here for more videos

CURRENT NEWS:

Dr. Byrne appears on Mic'd Up on Church Militant website on May 27, 2015

Dr. Byrne to speak at St. Mary Magdalen Church in Brentwood on October 8, 2013 Click for more details

Dr. Byrne appearing in Da Tech Guy Blog on subject of Brain Death

Do you really want to be an organ donor?
By Paul A. Byrne, MD

Listen to interviews of Mrs. Bernice Jones and Dr. Paul Byrne on Deanna Spingola show.
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Hour1 Hour2

Bioethics experts challenge the 'Revised Uniform Anatomical Gift Act (2006)' - **4-14-09**
By Paul A. Byrne, MD

Final Exit - Euthanasia in America - 3-29-09
Discussion on euthanasia in America hopefully with Dr. Paul Byrne and Ron Panzer of Hospice Patient's Alliance.

Preserving and Protecting Life From Conception to Natural Death - Army of Apostles - 3-17-09
By Dr. Paul Byrne - Life Guardian Foundation
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Transplant Tragedy - Parents claim son was killed by the hospital for his organs - CBS News - 3-16-09
By Maggie Rodriguez
Click here to listen

Parents Accuse Hospital of Killing Son to Harvest Organs
By Kathleen Gilbert

PITTSBURGH, PA, March 5, 2009 (LifeSiteNews.com) - An Ohio couple filed a lawsuit Wednesday accusing doctors of removing a breathing tube from their 18-year-old son, who had suffered a brain injury while skiing, in order to harvest his organs.

Michael and Teresa Jacobs of Bellevue, Ohio, parents of Gregory Jacobs, maintain that their son's death was caused, not by his injury, but by doctors removing his breathing tube and administering unspecified medication in preparation for organ removal.

The charges were filed against Pittsburgh's Hamot Medical Center doctors and a representative of the Center For Organ Recovery and Education (CORE).

The parents also say the CORE representative directed that Jacobs' organs be removed in the absence of a valid consent.

"But for the intentional trauma or asphyxiation of Gregory Jacobs, he would have lived, or, at the very least, his life would have been prolonged," says the lawsuit. "Gregory was alive before defendants started surgery and suffocated him in order to harvest his organs," which included his heart, liver and kidneys.

The suit maintains that Jacobs "experienced neither a cessation of cardiac activity nor a cessation of brain activities when surgeons began the procedures for removing his vital organs."

The parents filed the suit in the U. S. District Court in Pittsburgh seeking more than $5 million for their son's pain and suffering, medical bills, funeral expenses, and punitive damages.

The lawsuit comes only weeks after neurologist Dr. Cicero Coimbra told a Rome "brain death" conference that, "Diagnostic protocols for brain death actually induce death in patients who could recover to normal life by receiving timely and scientifically based therapies." (http://www.lifesitenews.com/ldn/2009/feb/09022504.html)

Coimbra referred to the so-called "apnea test," whereby living patients who cannot breathe on their own have their ventilator removed, and are deemed "brain dead" if after ten minutes patients do not resume breathing. The problem with the test, said Coimbra, is that otherwise treatable patients sustain irreversible brain damage by oxygen deprivation during that ten minutes.

See related LifeSiteNews.com coverage:

"Brain Death" Test Causes Brain Necrosis and Kills Patients: Neurologist to Rome Conference
http://www.lifesitenews.com/ldn/2009/feb/09022504.html

"Brain Death" as Criteria for Organ Donation is a "Deception": Bereaved Mother
http://www.lifesitenews.com/ldn/2009/feb/09022306.html

"Brain Death" is Life, Not Death: Neurologists, Philosophers, Neonatologists, Jurists, and Bioethicists Unanimous at Conference
http://www.lifesitenews.com/ldn/2009/feb/09021608.html

Doctor to Tell Brain Death Conference Removing Organs from "Brain Dead" Patients Tantamount to Murder
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New England Journal of Medicine: 'Brain Death' is not Death - Organ Donors are Alive
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Pro-Life Conference on "Brain Death" Criteria Will Have Uphill Climb to Sway Entrenched Vatican Position
By Hilary White - Rome correspondent

ROME, February 26, 2009 (LifeSiteNews.com) - If a patient is able to process oxygen from the lungs into the bloodstream, maintain a normal body temperature, digest food and expel waste, grow to normal adult size from the age of four to twenty, and even carry a child to term, can he or she be considered dead? Can a person who is "dead" wake up and go on later to finish a university degree? Can a corpse get out of bed, go home and go fishing? Can he get married and have children?

These are among the real-life stories of patients declared "brain dead" presented by medical experts at the "Signs of Life" conference on "brain death" criteria held near the Vatican in Rome last week. Ten speakers, who are among the world's most eminent in their fields, sounded a ringing rebuke to the continued support among medical professionals and ethicists for "brain death" as an accepted criterion for organ removal.

Dr. Paul Byrne, the conference organizer, told LifeSiteNews.com he was delighted with the success of the conference, that he hopes will bring the message that "brain death is not death" inside the walls of the Vatican where support for "brain death" criteria is still strong.

Dr. Byrne, a neonatologist and clinical professor of pediatrics at the University of Toledo, compared the struggle against "brain death" criteria with another battle: "I'm sure that slavery was at one time well-accepted in the United States, and that people saw big benefits to slavery. And yes, it was difficult to go away from that but it was absolutely essential."

"Slavery was doing evil things to persons. This issue of 'brain death' was invented to get beating hearts for transplantation. And there is no way that this can go on. It must get stopped."

Participants came from all over the world to attend the Signs of Life conference, with speakers from Quebec, Alberta, Ontario, Germany, Poland, the US, Brazil and Italy. The conference hall was packed to standing-room only with physicians, clergy, students, journalists, and academics. Clergy included two senior officials of the Vatican curia: Francis Cardinal Arinze, the head of the Congregation for Divine Worship and Sergio Cardinal Sebastiani, the President Emeritus of the Prefecture for the Economic Affairs of the Holy See. Two senior members of the Congregation for the Doctrine of the Faith were also present. Conference organizers told LifeSiteNews.com that they had expected no more than a hundred to attend and were surprised but very pleased with the crowd of over 170 for the one-day event.

Conflicting voices on "brain death" criteria are still battling in the Church. In February 2005, the Pontifical Academy of Sciences (PAS) refused to publish the findings of its own conference after the speakers roundly denounced "brain death" as a cynical invention to further the monetary interests of organ transplanters. The speakers said that using "brain death" for the purpose of organ harvesting results in the death of helpless patients. The PAS convened a second conference in 2007 with different speakers who, with only two dissenting, supported "brain death" for organ transplants. Papers from the 2005 conference that opposed "brain death" were excluded without explanation to their authors.

During a Vatican-sponsored conference last November on organ transplantation, at which not a single speaker raised their voice against "brain death," Pope Benedict XVI warned in an address that "the removal of organs is allowed only in the presence of his actual death." But on the Monday following the Friday organ transplant conference, only the PAS conference report in favor of "brain death" was posted to the Vatican website and not the Pope's warning.

Dr. Byrne said that a major function of the Signs of Life conference was "to support Pope Benedict," whose address in November, he said, had started to turn the Church against "brain death."

"It's here to demonstrate clearly that 'brain death' never was true death. What we're trying to do is come back to the truth and protect and preserve the life that comes from God.

"When there are attacks on life, then we, as physicians, defend it and that is what this conference is for."

The Signs of Life conference, sponsored privately by various pro-life organizations, including Human Life International, the Northwest Ohio Guild of the Catholic Medical Association, American Life League and the Italian organization Associazione Famiglia Domani, stood in opposition to the second PAS conference, which was titled, "The Signs of Death."

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"Brain Death" is Life, Not Death: Neurologists, Philosophers, Neonatologists, Jurists, and Bioethicists Unanimous at Conference
By Hilary White - Rome correspondent

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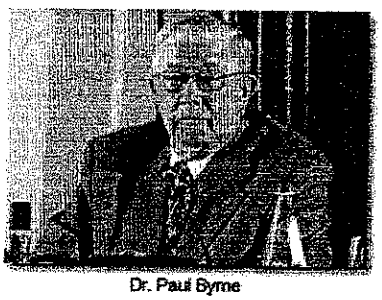
Dr. Paul Byrne

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Cardinal Sergio Sebastiani and Cardinal Francis Arinze were in attendance at the "Signs of Life" conference.

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Conference may Begin to Sway Vatican Opinion Against Brain Death: Eminent Philosopher
By Hilary White

ROME, February 24, 2009 (LifeSiteNews.com) - While he said that he could not predict the future, Professor Josef Seifert told LifeSiteNews.com (LSN) on Friday that a conference on "brain death" criteria last week had possibly opened a door to moving opinion in the Vatican away from support for the use of the criteria for organ transplants.

In an interview with LifeSiteNews.com the day after the conference, Professor Seifert said, "I'm not a prophet. On the other hand, if one believes in the Catholic Church as I do, then one must assume that earlier or later the truth will triumph and that the Church will not teach something false on central issues of faith or morals. And if that is so, and if what we say is true, I trust that it will be formulated."

Professor Seifert is a philosopher and the rector of the International Academy for Philosophy of Liechtenstein and a member of the Pontifical Academy of Life and was a speaker at the 'Signs of Life' conference held last week near the Vatican.

The conference was organized by Human Life International (HLI) and the American Life League (ALL), as well as the Italian organization Associazione Famiglia Domani and other groups, to address the growing opinion in academia, medicine and even within the Church that "brain death" is a legitimate diagnosis. The conference speakers, including eminent neurologists, jurors, philosophers and bioethicists, were united in their denunciation of the "brain death" criteria as a tool in the determination of death.

Speaking at the conference on the original formulation of the so-called 1968 Harvard Criteria that created "brain death," Professor Seifert told participants, "We look in vain for any argument for this unheard of change of determining death ... except for two pragmatic reasons for introducing it, which have nothing to do at all with the question of whether a patient is dead but only deal with why it is practically useful to consider or define him to be dead."

The two "pragmatic reasons" cited by the Harvard Report, he said, were "the wish to obtain organs for implantation and to have a criterion for switching off ventilators in ICUs." He said these must be rejected because they "possess absolutely no theoretical or scientific value to determine death." This conclusion was amply supported by clinical neurologists, and neurocardiologists, who told participants that a patient who is declared "brain dead" by the standard criteria, is, quite simply, still alive.

To LSN Professor Seifert responded to comments made in September 2008 by Francesco D'Agostino, professor of the philosophy of law and president emeritus of the Italian bioethics committee, that opposition to the "brain death" criteria in the Church is "strictly in the minority." A 2006 document, entitled "Why the Concept of Brain Death is Valid as a Definition of Death," was signed by Cardinal Georges Cottier, then theologian to the papal household; Cardinal Alfonso Lopez Trujillo, at the time president of the Pontifical Council for the Family; Cardinal Carlo Maria Martini, the former Archbishop of Milan; and Bishop Elio Sgreccia, the then president of the Pontifical Academy for Life.

Professor Seifert, however, said that he did not agree with the assertion that there is a universal consensus in the Church supporting brain death. He pointed to the act in 2005 by Pope John Paul II in convening a conference to discuss "brain death" as evidence that the subject is far from closed at the Vatican. Indeed, continued interest was signaled last week by the presence at the Signs of Life conference of Cardinals Arinze and Sebastiani and two representatives of the Congregation for the Doctrine of the Faith.

"There's no official church teaching at all against the conclusion that all the speakers reached yesterday that the brain death definition is not correct," he said.

He also said, however, that the matter of whether there is a universal consensus among medical professionals on "brain death" is not a central concern for the Church. "For the Magisterium of the Church it's a question of whether it's a fact or not."

Professor Seifert also noted the address by Pope Benedict XVI in November to the participants at a Vatican sponsored conference on organ transplants in which he did not use the term "brain death" but pointedly referred only to "actual death."

The Pope said that "the main criterion" must be "respect for the life of the donor so that the removal of organs is allowed only in the presence of his actual death," a strong indicator that he does not accept the concept of "brain death" as indicating actual death, according to Seifert.

Professor Seifert said, "One could hope that this speech prepares the way for formulating this even more clearly with reference to brain death. Many people like the organizer, Dr. [Paul] Byrne, who organized the conference, interprets this statement in this way. Now it may be wishful thinking, but it may also be correct."

The idea that there is a majority opinion among theological and ethics experts, including the Pontifical Academy of Sciences, in the Church in favor of "brain death" is irrelevant, he said, in the search for the truth.

"The same happened in the case of Humanae Vitae. There was a minority and a majority and the majority report said you should admit the Pill and contraception. But the Pope followed the minority report. A majority opinion is never what dominates and what should determine Church teaching is rather the truth. In the light of reason and also of Revelation, and not simply the opinion of a majority of people."

"Particularly not the majority of scientists," he added, "who are very fallible individuals."

"Normally there is much more common sense in simple people than in academicians and professors who all have their theories. It's very rare, I think, to have academicians to have the same simple pursuit of truth than among non-academicians."

He warned that the "brain death" theory has the characteristics of an ideology.

"It's clear that [transplantation] is a million or billion dollar business and it is clear that also it is useful for many patients." He said that motives such as fame for transplant doctors and researchers and money are among the "vested interests that could obscure the truth."

"For that reason, I think, if there's a majority in favor, it doesn't say much."

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"Brain Death" as Criteria for Organ Donation is a "Deception": Bereaved Mother
By Hilary White, Rome correspondent

ROME, February 23, 2009 (LifeSiteNews.com) - Bernice Jones came to Rome last week to tell the world that doctors killed her son by removing his organs. "Brain death is not death" and "organ donation is very deceptive," the bereaved mother told LifeSiteNews.com in an interview on Thursday.

Mrs. Jones was attending an international conference on the dangers of so-called "brain death" criteria and related her experience of losing her son, Brandon, who was declared "brain dead" and used as an organ donor.

"Families are led to believe that their loved ones are dead," Jones told LSN, "but in fact they are alive. You must be alive to be a vital organ donor." Families, she said, are being deceived by doctors and hospital administrators, "by everyone who is involved in organ transplantation." The declaration of brain death "is a deception, a violent deception, that your loved one is dead."

Jones described what she characterized as a betrayal of principle by medical professionals at a hospital in their home state of Washington, whose priority she argued is no longer the care of the patient at hand but the procurement of organs for transplants. Although she declined to name the hospital, she said, "It happens at all hospitals."

Nine years ago, Mrs. Jones's son suffered an accidental gunshot wound to the head and was declared "brain dead" upon arrival at the hospital. He was immediately prepared for the removal of his organs.

Mrs. Jones said, "While my family and I thought that our son was being treated for his well-being, to preserve and protect his life, he was not, he was being treated to be an organ donor."

"His vital organs were being procured not for his benefit but to benefit someone else."

24 hours after the family was told Brandon was dead, Mrs. Jones had an intuition that her son was still alive. Later investigation revealed that the hospital had told the family her son was "brain dead" but, without the family's knowledge, had kept him alive on a respirator for 20 hours while flooding his body with fluids and drugs in preparation for what his mother described as a live "dissection" that brought about his death.

Legal consent, she said, was obtained while the family was in deep shock over the accident. Jones's husband signed the consent forms over her objections and the family, still in shock, was told to go home. During their time at the hospital, the family was introduced to a woman whom doctors referred to as an "organ procurement agent." This woman used what Mrs. Jones described as a standard "script," speaking soothingly to the family about Brandon's altruism and desire to help others, to induce them to sign the consent forms, copies of which were not given to the family.

Mrs. Jones was later to learn that these procedures are standard for organ retrieval. "All of the organ donor families I have spoken to received the same script," she said. Organ procurement officials approach the family when they are at their most vulnerable, she said. "It's always when you're not mentally, emotionally capable" of making an informed decision.

Prior to obtaining his organs, Brandon was given paralysing drugs to keep him from moving. He was anesthetised during the removal process. Mrs. Jones said that the diagnosis of brain death is a sham. "If he is supposed to be dead, why does he need paralysing drugs to keep him from moving? Why does he need anesthesia?"

Brandon Jones was given, without his family's consent, what is called an "apnea test" by doctors, to determine brain death. Doctors remove the ventilator for two minutes from a patient who requires assistance breathing. The heart rate decreases and after two minutes without oxygen, "brain death" is declared.

The apnea test as a diagnostic tool was specifically denounced at the conference as unethical by Dr. Cicero Coimbra, a neurologist from Sao Paolo, Brazil. The test, he said, which cuts off oxygen to the brain, will bring about severe, irreversible brain damage in patients who, with proper care, would otherwise have had a good chance of survival.

Mrs. Jones believes doctors who are motivated by the desire to obtain organs use the apnea test knowing that it will induce severe brain damage while the body is prepared for organ removal.

Despite the harm it does, the apnea test, she said, is administered without the family's consent. "We were in with our son, and they told us to leave the room, that they had to perform a test. They did not ask permission to do this."

"If a family was made aware of what an apnea test consists of, no family member would ever consent to this."

She described what happened to her son: "For two minutes they took the ventilator away from him. They wait for the pulse to go down but the heart continues to beat. Then they put the ventilator back on. Now, in this two-minute timeframe, they pronounce the patient dead.

"Before they put them back on the ventilator they pronounce the patient dead. It's a prerequisite to being able to declare a legal but fictional death." This "death" is what she has described as a "convenience death, invented to schedule and regulate the actual time of real death."

Brandon died, she claimed, while his organs, including his still-beating heart, were removed in surgery. "Our son had been dissected alive and in doing so, killed."

Mrs. Jones is the founder of an organization of parents and families who have undergone this experience and which is dedicated to bringing to the public eye the danger of the "brain death" criteria. The Life Guardian Foundation is dedicated to educating the public that "life of the human person is a gift."

The group calls it "irreverent" to use terms such as "brain dead," "vegetative state," "terminal condition," and "imminent danger of death." "Such designations have been proposed and are actively used for the sole purpose of demeaning and shortening life, as well as to hasten the death of a human person."

Mrs. Jones said that in her research after her son's death that "there is no scientific validation for 'brain death'. Absolutely none, whatsoever."

Vatican in "Firestorm" over Brain Death Criteria for Organ Transplants
By Hilary White

ROME, November 24, 2008 (LifeSiteNews.com) – Dispute within the Vatican on the approval of so-called "brain death" criteria for organ transplants remains sharp, according to a senior Vatican correspondent. Sandro Magister, a leading Italian journalist and expert on the Vatican, wrote this week of the internal dispute over support and opposition to "brain death" criteria, the definition of death that allows vital organs to be removed from patients while their hearts are still beating.

Magister points out that in September this year, L'Osservatore Romano, the official newspaper of the Vatican, published on its front page a long article by the philosopher Lucetta Scaraffia. Scaraffia, who is the vice-president of the Italian Association for Science and Life and a member of the Italian National Committee on Bio-Ethics, called into question the Vatican's approval of "brain death" criteria for organ transplants.

That article, said Magister, "raised a firestorm" of debate within the Vatican, coming as it did in the immediate lead-up to a generously financed international conference on organ transplants, sponsored in part by the Pontifical Academy for Life (PAV). That sponsorship had outraged pro-life advocates around the world who said that, given the problems surrounding organ transplantation, the PAV had no business promoting it. Judie Brown, a member of the PAV and the head of American Life League, had written to Academy head Archbishop Fisichella asking that the conference be postponed or cancelled altogether.

Nevertheless, Magister said, the "predominant approach" towards organ transplantation by the Vatican has been "agreement with the practice of transplanting organs after the confirmation of brain death." It was perhaps with this "agreement" in mind that Scaraffia wrote in L'Osservatore Romano that a declaration of "brain death: cannot be considered the end of life in light of new scientific research."

The unease of the pro-life movement with "brain death" was sustained by Pope Benedict XVI's address to the transplant conference, in which he pointedly insisted that organ donation must remain "a gift" of the donor and that organs cannot be taken from vulnerable persons without their consent.

"The main criterion," the Pope said, must be "respect for the life of the donor so that the removal of organs is allowed only in the presence of his actual death."

The Pope is likely to have been referring to the L'Osservatore Romano article when he told the Transplant Conference, "Science, in recent years has made further progress in the determination of the death of a patient." In the question of determination of death, the Pope cautioned, "there must not be the slightest suspicion of arbitrariness. Where certainty cannot be achieved, the principle of precaution must prevail."

At the same time, however, Magister says that "pressure was applied" to Pope Benedict to attempt to force him to confirm "brain death" as a valid criterion. Magister pointed out, as evidence of the dispute within the Vatican, that Bishop Marcélo Sánchez Sorondo, chancellor of the Pontifical Academy of Sciences (PAS), immediately following the Pope's address hastened to post to the Vatican website the findings of a group of scholars at a 2006 conference of the PAS who supported "brain death" criteria.

Bishop Sorando did not also post the suppressed findings of the 2005 conference on the same topic where a majority of participants opposed 'brain death' as a true definition of death. There was a more selective invitation to pro-organ transplant scholars for the 2006 conference.

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Pro-Life Conference on "Brain Death" Criteria Will Have Uphill Climb to Sway Entrenched Vatican Position
By Hilary White

ROME, February 16, 2009 (LifeSiteNews.com) - An conference set to take place in Rome this week on "brain death" seeks to clarify the position of the Catholic Church on the removal of vital organs from patients.

In November 2008, a high-profile conference on organ transplants, held in one of Rome's most prominent conference halls, steps away from St. Peter's Basilica, and sponsored by the Vatican's Pontifical Academy for Life, caused an uproar when it declined to address the ethical problems of "brain death" criteria.

Hundreds of letters and appeals to the Pontifical Academy for Life from pro-life advocates around the world went un-answered and the conference went ahead with no mention of any of the controversy surrounding the use of these and other criteria that allow the removal of organs from living patients.

Pope Benedict XVI, however, in his address to the conference, warned that organ transplantation can be a source of abuses of "human dignity."

"The main criterion," the Pope said, must be "respect for the life of the donor so that the removal of organs is allowed only in the presence of his actual death."

Immediately following publication of the Pope's address, however, the Vatican website posted articles defending the use of brain death criteria in determining death for purposes of organ transplants.

In early September, as news of the organ donor conference was starting to make the rounds of the pro-life community, L'Osservatore Romano broke ranks and published an article by Lucetta Scaraffia, a professor of contemporary history at the Rome university La Sapienza, outlining the dangers of the brain death criteria.

In response, the director of the Holy See Press Office, Fr. Federico Lombardi, backpedalled away from the position taken in the article, saying it is "not an act of the Church's magisterium, nor a document of a pontifical organism," and that the reflections expressed in it "are to be attributed to the author of the text, and are not binding for the Holy See."

This week's conference has a large task ahead in convincing the Vatican to shift direction in its support of brain death criteria. In 1985, a statement from the Pontifical Academy of Sciences upheld the use of "irreversible coma" as a legitimate criterion for a definition of death for organ removal. This was reiterated in 1989 with another statement from the same academy, reinforced with a speech by John Paul II. John Paul II reinforced this position in an address to a world congress of the Transplantation Society, on August 29, 2000.

Sandro Magister, a reporter on Vatican affairs wrote in September, "In this way, the Catholic Church in fact legitimated the removal of organs as universally practiced today on people at the end of life because of illness or injury: with the donor defined as dead after an 'irreversible coma'" has been verified, even if he is still breathing and his heart is beating."

Magister quoted Francesco D'Agostino, a professor of the philosophy of law and president emeritus of the Italian bioethics committee, and a member of the "ecclesial camp," saying, "Lucetta Scaraffia's thesis is present in the scientific realm, but it is distinctly in the minority."

Dr. Paul Byrne is one of the organisers of this week's conference, provided LifeSiteNews.com with an advance copy of his presentation. He intends to argue the case that the use of "brain death" criteria results in the removal of organs from living patients, and is tantamount to murder. (To find out more about his presentation see: http://www.lifesitenews.com/ldn/2009/feb/09021608.html)

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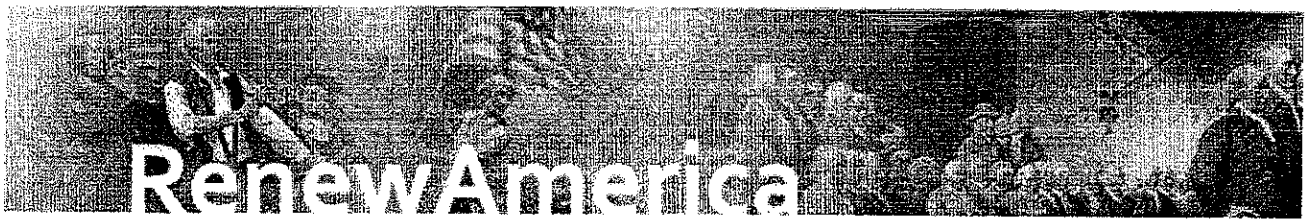

October 29, 2013

Execution in a New York hospital

Paul A. Byrne, M.D.

By Paul A. Byrne, M.D.

Michael, 60 years old, had just finished eating. Michael and his family were watching television when Michael suddenly slumped and fell to the floor. His family called 911. The emergency medical team resuscitated Michael. On the way to the hospital, a pulse was detected. Medications to support blood pressure were used during the resuscitation.

A diagnosis of mental illness was made many years earlier. Michael had no known physical illness prior to his collapse. Michael lived with his mother and sisters. They were Catholic and lived in accord with the teachings of the Catholic Church. Michael did not use tobacco or drink alcohol. Michael took 2 medications for his mental illness. Both affect the brain; one of them "increases risk of death."

On admission to hospital, Michael was breathing, but unresponsive. He was anemic (Hemoglobin 8) and his white blood cells showed many young forms (occurs with infection). On admission, his temperature was normal, but the next morning was elevated to 103 degrees (occurs with infection).

One consultant wrote, "There has apparently been some discussion back-and-forth between the hospitalist team, the intensivist, and the organ donor people as to how to properly manage him." In less than 24 hours after admission to hospital the neurology consultant wrote, "Limited neurological examination. The patient is unresponsive. Pupils are fixed. Absent corneal reflex bilaterally. Absent doll's eyes. No purposeful movements of the extremities noted. No movements of extremities to noxious stimuli. Reflexes are absent throughout. Toes are mute. IMPRESSION:... clinically, the patient is brain-dead status post cardiac arrest, likely with severe anoxic damage to the brain. May consider, do not resuscitate."

EEG showed "intermittently fast background activity of very low amplitude. Anteriorly also record consist of an irregular fast activity of small amplitude. No focal slowing or frank epileptiform features noted throughout the recording."

Sodium was abnormally elevated to 157 mEq/L; repeat was 162. Two days after admission he was determined to be "brain dead" per neurology. During an apnea test, no breathing was observed.

No blood levels of drugs that were prescribed or any other drugs were obtained. No cause of collapse of Michael was overtly considered other than statements that Michael had suffered from lack of

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oxygen and that Michael was "brain dead." It didn't matter that there was brain wave activity and that his heart was beating 100,000 times per day and that circulation and respiration were occurring with support from the ventilator.

Michael's relatives were assured that the determination of "brain death" was done in accordance with the hospital policy of certification of death by neurological criteria, which is patterned after, and consistent with, the New York State Department of Health and New York State Task Force on Life & the Law, "Guidelines for Determining Brain Death," published November 2011. In this document "brain death" is defined as "irreversible loss of all function of the brain. The three essential findings are coma, absence of brainstem reflexes and apnea." It was determined by a neurologist, an intensivist, and a hospitalist that there were no "confounding clinical circumstances." Under New York State law, Michael was determined to be "brain-dead" and was legally dead.

A Catholic priest who is Chairman of the Ethics Committee at the hospital volunteered that the hospital operated in accordance with the Ethical and Religious Directives of the Catholic Bishops. This man was legally "brain dead" and ventilator support of the vital activity of respiration would be stopped at a precise hour and Do Not Resuscitate (DNR), which was already in place over the objection of the relatives, would be carried out. The ventilator was then taken away at the precise hour, even though Michael's relatives strongly objected. Prior to removal of the ventilator Michael's heart was beating; blood pressure was normal. Michael had respiration supported by a ventilator that pushed air in. Michael had to push the air out before the ventilator could push the air in again. A ventilator can push air into a cadaver, also known as a corpse, but quickly after death, the air will not and cannot come out of a cadaver.

Michael was judged to be "brain dead" shortly after arrival at the hospital, which Michael's relatives and the general public expect to be a healing center. In the hospital Michael was sentenced without a trial to true death. How was true death imposed on Michael? The Uniform Determination of Death Act (UDDA) includes "irreversible cessation of all functions of the entire brain." Note that the word "functions" is plural.

The statute in New York includes "total and irreversible cessation of brain function." Thus, the statute has reduced the plural "functions" to the singular "function." The brain has many functions; absence of any function as determined by the three doctors in the New York Hospital meant absence of "all function." Thus, the statute and Rules do not protect the life of the patient.

The Rules and Regulation call for providing "reasonable accommodation of a Surrogate Decision-maker's religious or moral objections to use of the brain death standard to determine death." Michael's mother and sisters pleaded with the administrator of the hospital not to take away the ventilator, but the judgment had been made; nothing could be done to stop the removal of the ventilator. It was the hospital's decision that they had provided "reasonable accommodation" to Michael's family's religious and moral objections to the "brain death" criteria used by the hospital. They had a Catholic priest, the Ethics Committee, and it was stated that they were operating in accordance with the Ethical and Religious Directives of the Catholic Bishops. It was also stated that they had a judge who agreed with what they were doing and they would give no more time to Michael, not even one more hour or one more day!

Prior to 1968, ventilators were in use but there was no controversy. Patients died on ventilators. So how did all these issues that involve taking organs and stopping ventilators come about? The goal of medical practice used to be that a living person would not be declared dead. Until the advent of mechanical ventilators and other complex life supporting therapies, the mistake of judging a dead person as alive was practically impossible. Prior to these developments and the desire to do vital organ transplantation, medicine made every effort to judge the moment of death in the direction of preserving human life from a death-dealing mistake.

"Brain death" did not originate or develop by way of application of the scientific method. "Brain death" began with the appointment of the Harvard Committee to consider the issues. The results of their work were in the "Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death." [1] The first words of this report are as follows: "Our primary purpose is to define irreversible coma as a new criterion for death." Only persons who are alive can be in a coma, whether reversible or not. Was this the hubris of a few academicians or was it simply a surrender to fear of legal chastisement regarding perceived economic and utilitarian needs in 1968, especially the desire to get healthy living vital organs for transplantation? It seems that a predetermined agenda existed from the onset. There were no patient data and no references to basic scientific studies. In fact, there was only one reference, which was to Pope Pius XII. [2] While there was a reference to and a quotation from this Allocution of Pope Pius XII, they neglected to include the following: "But considerations of a general nature allow us to believe that human life continues for as long as its vital functions – distinguished from the simple life of organs – manifest themselves spontaneously or even with the help of artificial processes."

The primary purpose of the Committee was not to determine **IF** irreversible coma was an appropriate criterion for death but to see to it that **IT WAS** established as a "new criterion for death." With an agenda like that at the outset, the data could be made to fit the already arrived at conclusions. There was a serious lack of scientific method in the origination and development of "brain death."This has continued to the present time where there is no consensus as to which of the myriad of sets of criteria to use and criteria for "brain death" are not evidence based.

"Brain death" is not true death. Rather it is observing cessation of functioning of the brain, which is then translated into "brain death." The primary reason for the origination and propagation of "brain death" was and is the desire to obtain vital organs for transplantation. It can now be ascertained that a validly applied scientific method, sound reasoning, and available medical technology were not utilized in developing the *new* way of determination of death called "brain death" for the simple reason that death is the absence of life. Life and true death cannot and do not exist at the same time in the same person.

When a person has a head injury or, as in this case, sudden collapse, explainable or not, quickly the possibility of getting organs for transplantation is entertained. In Michael's case no attempt was made to get his organs. Why not? No reason was apparent to indicate that Michael's organs would not be suitable for transplantation. Was it related to mental illness? "Discussion with the organ donor people did occur." Quickly it was determined that Michael was "brain dead" and Do Not Resuscitate (DNR) was considered and later carried out over the objection of Michael's relatives.

Michael's mother and sisters wanted Michael to be treated. Why wouldn't they? They took care of Michael during his entire life. When Michael collapsed, they called 911 expecting to get help for Michael. Paramedics responded. During transport the pulse returned. At the hospital Michael was said to be "brain dead" based on absence of brain stem reflexes and no visual observation of breathing. The fact that Michael had electrical activity in his cerebral cortex, the largest part of his brain, meant nothing to the doctors who said all they needed was absence of the brain stem reflexes that they had tested and a positive apnea test (positive meaning that he did not show breathing efforts at that time sufficient for observers to see). I add that for these doctors at this New York hospital, they had all they needed to discontinue care! Yet, these doctors, quick to evaluate for "brain death," did not do basic diagnostic tests to rule out infection, identify causes of the metabolic derangements of his electrolytes nor did they test for the presence of obvious drugs or toxins as the reason for his sudden collapse. They did not provide basic supportive care more than 48 hours. Once they determined that he was not an organ donor, they seemed not only to want a "do not resuscitate order" in the event of another collapse, they were intent on withdrawing life-sustaining ventilator support making another collapse, anoxic events and death almost inevitable. They refused family wishes to continue to treat the patient and even denied them time to make transfer arrangements so that their loved one might have a chance at life at a different institution with different doctors. Michael, an innocent person, was effectively executed without trial in a New York hospital.

See: www.lifeguardianfoundation.org for information on how to protect and preserve your life.

NOTES:

[1] Report of the Ad Hoc Committee of the Harvard Medical School to Examine the Definition of Brain Death. Special Communication. JAMA 1968;205(6):85-88.

[2] Pius XII. To an International Congress of Anesthesiologists, Nov. 24, 1957, *The Pope Speaks*, Vol. 4, No. 4 (Spring 1958), 393–398.

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EXHIBIT 7

EXHIBIT 7

RenewAmerica

May 21, 2015

Jahi is alive -- praise the Lord and pass the ammunition

Paul A. Byrne, M.D.

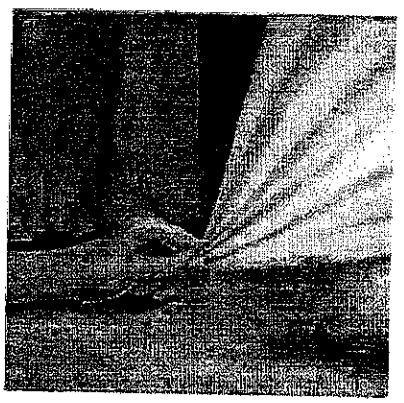
By Paul A. Byrne, M.D.

Jahi McMath is a 14-year-old girl who was 13 when a death certificate was issued for her by the coroner in Oakland, California.

Recently, I visited Jahi and her family in her home in New Jersey. Let's review recent events in Jahi's life.

Jahi underwent extensive tonsillectomy surgery on May 9, 2013, in Children's Hospital Research Center of Oakland. After the surgery, Jahi continued to bleed until she stopped breathing. Jahi was resuscitated and placed on a ventilator. Doctors at Oakland Children's Hospital declared from their examination, that Jahi met criteria for "brain death." Note that quotation marks surround "brain death" to indicate that that these two nouns together are not indication of true death.

Three separate apnea tests were conducted on Jahi. Each time Jahi's life supporting ventilator was taken away for 10 minutes. Each time this caused carbon dioxide and acids to build up in Jahi's brain and body. These tests did nothing to help Jahi and very likely resulted in further swelling and damage to Jahi's brain. Yes. The doctors suffocated Jahi for 30 minutes as part of their declarations of "brain death."



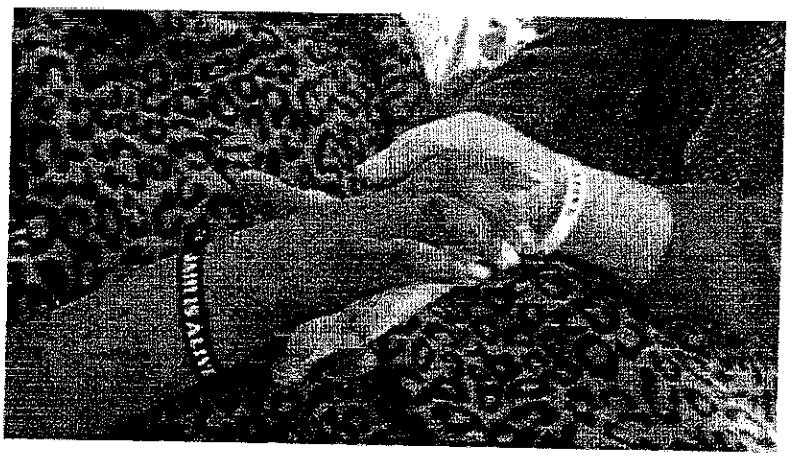
Everyone should understand that this dangerous test can only harm or even cause death of a patient. The apnea test is not beneficial for the patient. (Incidentally, the apnea test is very different from the test for sleep apnea.) Jahi's mother, like the public in general, was given no information about the risks of the apnea tests.

After Jahi was declared "brain dead," all treatments were stopped except for the ventilator and IV fluids. These supported Jahi's life, but no other tests and treatments were given to help the young teenage girl. Remember that the ventilator only pushes air into Jahi's living lungs then her living body elastically pushes the air out. The ventilator cannot support respiration in a cadaver. The ventilator can work only when the patient is living.

When a ventilator is needed for a prolonged period of time, a tracheostomy is required. Doctors at Oakland Children's Hospital refused to do the tracheostomy. Jahi was transferred to a hospital in New Jersey where the life preserving tracheostomy and gastrostomy were done to make it easier to aid Jahi's breathing and for her to receive nutrition. Jahi was without nutrition from the day of her surgery, December 9, 2013, until after the gastrostomy on January 8, 2014. Jahi was without food for one month! She was starved for one month!

Jahi's heart has continued to beat on its own more than 60 million times since she was declared "brain dead." The doctors in Oakland Children's Hospital further declared that Jahi's heart would stop beating and that she would otherwise deteriorate. These predictions have not occurred. After the declaration of "brain death," the doctors and nurses referred to Jahi as "a dead body" and would not call her by her name. Jahi has been alive since her conception within her mother, and she remains alive today.

Recently I visited Jahi in her home. Jahi is beautiful. The day that I visited Jahi she had on lip gloss like many teenagers. A picture of Jahi's hand joined with my hand is enclosed. Wristbands on both of us state "Jahi is alive" and "Prayer works."



"Brain death" is not true death. Everyone declared "brain dead" has a beating heart, circulation, respiration and mutually interacting heart, liver, kidneys, intestine, salt and water balance, self-controlled body temperature and thousands of actions and reactions that can occur only in someone who is living and never in a cadaver. Healing continues in Jahi, like all living patients declared "brain dead."

Some claimed more than a year ago that Jahi's soul had separated from her. This was false and gravely misleading. When will those who mistakenly have declared Jahi "brain dead," have sufficient integrity to retract their misleading statements about Jahi?

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EXHIBIT 8

EXHIBIT 8

Christ or Chaos

September 10, 2011

Dr. Paul Byrne's Refutation

by Paul A. Byrne, M.D.

[**Thomas A. Droleskey foreword:** Dr. Paul Byrne has taken a great amount of time in the past week to refute the grave errors and false assertions that Bishop Pivarunas and the clergy of the Congregation of Mary Immaculate Queen make concerning the medical industry's manufactured myth of "brain death." He has chosen to write his response to Bishop Pivarunas's September 8, 2011, "final response" without mentioning the bishop's name for reasons that are his own. I have also included Dr. Byrne's 2007 interview with Mrs. Randy Engel for The Michael Fund Newsletter so that readers can understand the answers in an easy question-and-answer format.

[It is tragic that Bishop Pivarunas has not seen fit to speak with Dr. Byrne personally or to invite him to speak to the seminarians or his parishioners, most of whom would not like ending their days in a sterile room as their body is vivisectioned by latter day Aztecs. To put aside any questions as to Dr. Byrne's credentials, permit me to provide with a summary of his curriculum vitae. Let those who have eyes see. May God have mercy on us all.]

Dr. Paul A. Byrne, a Neonatologist, is Director of Neonatology and Director of Pediatrics at St. Charles Mercy Hospital in Oregon, Ohio, is Clinical Professor of Pediatrics University of Toledo College of Medicine, Board Certified in Pediatrics and Neonatal-Perinatal Medicine, Member of Fellowship of Catholic Scholars.

Dr. Byrne is past-President of the Catholic Medical Association (USA), formerly Clinical Professor of Pediatrics at Creighton University School of Medicine in Omaha, NE, and at St. Louis University School of Medicine in St. Louis, MO. He is author and producer of the film "Continuum of Life" and author of the books "Life, Life Support and Death," "Beyond Brain Death," and "Brain Death Is Not Death."

Dr. Byrne has presented testimony on "life issues" to eight state legislatures beginning in 1967. He opposed Dr. Kevorkian on the television program "Cross-Fire." He has been interviewed on Good Morning America, public television in Japan and participated in the British Broadcasting Corporation Documentary "Are the Donors Really Dead?" Dr. Byrne has authored articles against euthanasia, abortion, and "brain death" in medical journals, law literature and lay press.

Paul was married to Shirley for forty-eight years until she entered her eternal reward on Christmas 2005. They are the proud parents of twelve children and grandparents of twenty-six grandchildren. (**Dr. Paul Byrne**.)

Dr. Paul Byrne's Refutation of Bishop Pivarunas's Public Statements on the Myth that Is "Brain Death"

[Dr. Byrne's comments are in red ink. Passages from Bishop Pivarunas's letter are in black ink.]

Dr. Byrne: Here the issues are addressed for a particular Bishop and others associated with him, but the issues are not different because of belief or opinion. It is a fact that a person on earth is either alive or dead, whether he is born or unborn, conscious or unconscious, young or old, etc. What is legal is not necessarily moral. The weak and the injured are vulnerable to the impact of the strong and powerful.

Bishop Pivarunas: One last issue to address is that of "brain death" and "organ transplants." The . . . position is that only a true pope can render an authoritative decision in this matter.

Dr. Byrne: Until a true pope speaks is it OK to believe and teach whatever a doctor says or a group of doctors state in these serious matters of life and death?

Is it only a true pope who can tell a living body from a dead body? How important is it for a pope, a bishop and everyone else to have interest in this topic?

It was truly a matter of life and death for Todd Rini, an 18 year old young man with a head injury. Todd was in an ICU on a ventilator. Todd's vital signs of temperature, heart rate, blood pressure and respiration were within normal limits. Todd's mother objected to doing the apnea test, but it was done anyway. The doctor responded that it was legal to do the testing. The apnea test was done by taking away the ventilator for 10 minutes. Toddâ€™s carbon dioxide level increased to 70 (normal is 40). His pH decreased to 7.20 (normal 7.40). His intracranial pressure increased during the test; his blood pressure decreased; his heart stopped. He was given adrenalin into the endotracheal tube and put back on the ventilator. He was declared "brain dead." The apnea test which is required in all sets of criteria for "brain death" caused Toddâ€™s condition to worsen. The apnea test is a lethal evaluation that cannot help the patient and can cause the condition to get worse or the patient to die, as it came close to happening to Todd. Plans were continued to find recipients for Todd's heart, lungs, liver, pancreas and intestines.

He is warm and has a normal heart rate, blood pressure and respiration, albeit the vital activity of breathing is done via a ventilator.

Support of the vital activity of ventilation was continued. The ventilator pushed air into Todd. Todd pushed the air out exactly like every living patient on a ventilator. Todd's heart beat and rate were normal.

Todd's classmate arrived at the hospital. He related how Todd had been getting instruction from the . . . priest in . . . , anticipating he would be baptized the next Sunday. For whatever reason, Todd had not told his parents about his receiving instructions.

The . . . priest was called. The priest was told that Todd was declared "brain dead." He responded that ". . . does not approve nor condemn the brain death criteria." If Todd is truly dead, he cannot be baptized. If there is doubt, could the priest baptize Todd on the basis of doubt? But if there is doubt, can Todd's beating heart, liver, lungs, intestine, pancreas and both kidneys be cut out, after which all doubt about true death is removed? What is the priest to do? After all, the priest needs a true pope to tell him to ask a doctor. How else can he decide?

The priest had participated in many funerals. The dead body always felt cold because the dead body was always at room temperature. Never was the heart beating and the dead body was always pale or slightly bluish, especially the nail beds. Todd wasn't like this. Was Todd dead or living?

The living person has a body and the intrinsic unity with the soul. The spirit is in the living body. Death is the separation of the soul from the body.

If Todd is a cadaver, put him in a coffin, but keep his ventilator connected. His heart is beating strongly; his color is good. Where the incisions were made to insert the plastic tubes into Todd's body, there is no oozing of body fluids. These incisions are healing. Call the hearse (not an ambulance) to take Todd to Church where the priest meets the coffin at the door. He places a Pall over the coffin containing the heart beating Todd. (Under the Pall, it could be said that Todd is receiving palliative [palliative] care.)

Can the priest use his common sense and experiences of what happened when he was a child when his fish was floating on its side with a moving gill? Did he say his fish was dead, even though his fish wasnâ€™t moving, except the gill? Could he have buried his fish with the moving gill? Then when the fish stopped moving, it wasn't too long until the fish was stinking. Yes, a person has an

immortal soul different from a fish. But if he wouldn't call a fish dead when the gill was moving, how could he accept death of Todd when Todd's heart was beating? But the doctor said Todd was "brain dead." Oh yes, the priest is there to get souls to heaven, at this time it is Todd's soul and the soul of the priest that is at stake. But if Todd is truly dead, the priest knows it would be a sham to pour water and say the prescribed words of Baptism. If Todd is alive, the priest is obligated to baptize. If there is doubt, doesn't the priest still have obligation? If the effort to resolve the doubt fails, the sacrament ought to be conferred under at least a tacit condition (with the phrase "Si capax est," "If you are capable" . . .) If there is doubt, shouldn't the priest speak up and express his doubts about true death of the heart beating Todd who also has many other signs of life? (Warm, blood pressure, salt and water balance, reaction to pain if the stimulus would be enough like making an incision from the top of Toddâ€™s chest to his pubis to get his organs, and many others.)

Oh yes, a nurse-cousin just came on duty. He scraped Todd's foot with a pocket knife. Was there a response? Indeed there was. The transplantation was stopped [like Zack Dunlap in OK]. Zack recovered. You can see and listen to him on the TV if you google Zack Dunlap. The image of Todd's brain can be seen as "black" indicating no circulation.

Bishop Pivarunas: a) On November 24, 1957, Pope Pius XII addressed the International Congress of Anesthesiologists and stressed the importance of the opinion of doctors: "It remains for the doctor, and especially the anesthesiologist, to give a clear and precise definition of 'death' and 'the moment of death' of a patient who passes away in a state of unconsciousness.

> "If, as in the opinion of doctors, this complete cessation of circulation means a sure separation of the soul from the body, even if particular organs go on functioning, Extreme Unction would certainly be not valid, for the recipient would certainly not be a man anymore.
>
> "If, on the other hand, doctors are of the opinion that the separation of the soul from the body is doubtful..."
>
> "Where the verification of the fact in particular cases is concerned, the answer cannot be deduced from any religious and moral principle and, under this aspect, does not fall under the competence of the Church. Until an answer can be given, the question must remain open. But considerations of a general nature allow us to believe that human life continues for as long as its vital functions--distinguished from the simple life of organs--manifest themselves spontaneously or even with the help of artificial processes."

Dr. Byrne: It seems that Pope Pius XII studied these issues very carefully and that he did understand certain aspects of medicine. (E.g., see his Allocution on Feb 24, 1957.)

Bishop Pivarunas: b) When this matter was first raised, Dr. . . . , M.D., F.A.C.S., was primarily consulted. He practiced thoracic and cardiovascular surgery for approximately 30 years in both an academic (medical school) and private practice setting. Dr. . . . had no doubt that brain death was true death and that the transplanting of organs was moral.

Dr. Byrne: What is the basis of his "no doubt that brain death was true death"? Did he do experiments on dogs, cats or rats? Did he have experiences with 100 patients, or even 10? Or can he give references to investigations that others did?

No he cannot because they do not exist!

Further, did any of the doctors ever participate in transplantation? Where are the articles they have published on the subject?

Bishop Pivarunas: c) Other Catholic medical professionals were consulted, and they reiterated the

same position as Dr. . . . This matter was further researched at . . . Hospital in . . . , a leading heart hospital in the area, and also . . . Medical Center in . . . .

Dr. Byrne: The same questions must be asked of these expert consultants who are willing to have people killed if the declaration of "brain death" is not true death, which means the person is living.

Bishop Pivarunas: d) I also consulted my brother, Dr. . . , who is director of the residency program/chairman of the department of OB/GYN at the . . . Hospital in . . . He is also the regional director for the . . . Medical Association (Region . . .) and the recipient of the . . . Award for outstanding service in the pro-life movement. He reassured me that the vast majority of pro-life doctors hold to the concept of brain death as true death. He knows Dr. Paul Byrne and has said that he is part of a very small minority of doctors who do not accept the brain death criteria.

Dr. Byrne: Where does he get "the vast majority of pro-life doctors"? He must have a reference. Or maybe he has done his own research?

Bishop Pivarunas: "He knows Dr. Paul Byrne and has said that he is part of a very small minority of doctors who do not accept the brain death criteria."

Dr. Byrne: Dr. Paul Byrne does not know him. Has the doctor ever read Paul Byrneâ€™s articles in JAMA or the Gonzaga law Review (85 pages with 246 references, coauthored with a neurologist, a Dean of a Law school and a Catholic theologian). The consulting advising doctor must have information about this "very small minority of doctors." But even if it is a very small minority, St. Augustine taught, "What's right is always right even if no one is doing it, and what's wrong is always wrong, even if everyone is doing it."

Truth is what counts, not the majority or minority. Many doctors, clergy and legislators are not informed and are kept from getting information, while their heads are filled and continually bombarded with the well being of the recipients of organs. What about those from whom the organs are taken? To be suitable for transplantation the organ must be healthy. Organs must be taken from a living person. After the organ is taken, if it is an unpaired vital organ, the donor is always dead. When the organ is taken, the donor is killed in the process of taking the organs. After true death organs that require a blood supply are not suitable for transplantation. (Tissues like the cornea, heart valves, skin and bones can be taken and used. A tissue is not an organ.)

Bishop Pivarunas: Based on the above references of Pope Pius XII and in light of the fact that most pro-life doctors are convinced that brain death is death . . . does not approve nor condemn the brain death criteria and organ transplants.

Dr. Byrne: Is this an admission that this Bishop and . . . are sitting on the fence and are lukewarm? The Apocalypse 3:16: "But because thou art lukewarm, and neither cold, nor hot, I will begin to vomit you out of my mouth" (Latin Vulgate: "incipiam te evomere ex ore meo").

Where is the data for "most pro-life doctors are convinced that brain death is death"?

If . . . does not approve nor condemn the brain death criteria and organ transplants, then if "brain death" is not true death . . . approves of killing persons when vital organs are excised. Further and very important, if the patient is not reconciled with God and more time is needed for God's mercy, isn't . . . participating in sending such souls who are not in the State of Grace into everlasting fire for eternity?

e) Furthermore, the Pope posed the question in his address to anesthesiologists:

Here the Pope paraphrased the question asked of him, this is the question asked of the pope:

> **"Has death already occurred after grave trauma of the brain, which has provoked deep unconsciousness and central breathing paralysis, the fatal consequences of which**

have nevertheless been retarded by artificial respiration? Or does it occur, according to the present opinion of doctors, only when there is complete arrest of circulation despite prolonged artificial respiration?"

Pope Pius XII answered:

"Where the verification of the fact in particular cases is concerned, the answer cannot be deduced from any religious and moral principle and, under this aspect, does not fall within the competence of the Church. Until an answer can be given, the question must remain open."

Dr. Byrne: So why was the next sentence omitted by Bishop . . . ?

This is the omitted sentence: "But considerations of a general nature allow us to believe that human life continues for as long as its vital functions--distinguished from the simple life of organs--manifest themselves spontaneously or even with the help of artificial processes."

Bishop Pivarunas: Medical technology has advanced considerably since the time of Pope Pius XII. This technology was unknown to doctors 54 years ago. The concept of brain death (the entire brain, including the brain stem) was not taken into consideration by Pope Pius XII.

Dr. Byrne: Ventilators were in use and transplantation had begun. Pope Pius XII was well aware of corneal transplantation and gave clear teaching. He also indicated he knew some aspects of medicine.

How can there be an "entire brain" without the brain stem? He considered "Deep unconsciousness and central paralysis" was the requirement for the Collaborative Study of 844 patients. But they reported on only 503. What happened to the other 341? Of those they did autopsy only 10% had no pathology in the brain. 44 pf the patients did not die. This is the largest study in the literature.

Or for that matter, any part of the brain? How about the midbrain? How about the thalamus?

Bishop Pivarunas: f) In the particular case which is often referred to by Fr. . . . , . . . , the baby donor, had died, having been delivered an hour after his mother's uterus had ruptured. A traditional Catholic nurse said that when a woman's uterus ruptures, the baby will die within minutes. She also stated unequivocally that in the case of . . . , the baby donor, there would be no doubt of death. The Catholic parents whose baby was the recipient of the heart transplant were convinced that the brain death criteria was lawful. They made the decision, not . . . .

Dr. Byrne: Could the parents think anything else? If the donor was not truly dead, the donor was killed. As much as a parent wishes his baby to live, would they say kill somebody else;s baby so my baby can live?

"Not . . . "? Isnâ€™t that a cop out?

Bishop Pivarunas: In conclusion, I do not intend to waste precious time in an endless debate. There are more important things to do, such as saving souls.

Dr. Byrne: Like **not** saving souls? How about the soul of the Bishop, and all his followers? Where and what is the obligation?

[Thomas A. Droleskey: I thank Dr. Paul A. Byrne for taking the time to address this matter. Anyone who has been told by a priest of the CMRI to sign up as an "organ donor" should sign up his "donor" card as that is a license given to the medical industry to kill innocent human beings. Dr. Byrne is a voice

in the wilderness. Only a fool refuses to listen to and then heed the Catholic truth he writes with such eloquence.]

Vital Organ Transplantation and "Brain Death"
A Re-Examination of the Basic Issues by Dr. Paul A. Byrne
An Interview conducted by Mrs. Randy Engel for The Michael Fund Newsletter, December 2007

Since the founding of the IFGR/MF in 1978, the Michael Fund Newsletter has covered many life-death issues, particularly those related to the field of genetics including eugenic abortion, prenatal diagnosis and genetic counseling. In this issue of our newsletter, we examine some important aspects of vital organ transplantation with the distinguished physician and pro-life advocate, Dr. Paul Byrne. Editor, Randy Engel

Editor: Dr. Byrne, how would you describe the body of a human being?

Dr. Byrne: A human person on earth is composed of body and soul. God creates the person. Biologically speaking, the body is composed of cells, tissues, organs and eleven systems, including three major vital systems. No one organ or system controls all other organs and systems. Interdependent functioning of organs and systems maintains unity, homeostasis, immune defenses, growth, healing and exchange with environment, e.g., oxygen and carbon dioxide. Life on earth is a continuum from its conception to its natural end. The natural end (true death) occurs when the soul separates from the body.

Editor: Most adults and children, even if they are not physicians, recognize signs of life, don't they?

Dr. Byrne: Yes, of course. The vital signs of a living human being include temperature, pulse, blood pressure and respiration. Physicians, nurses and paramedics listen to the beating heart with a stethoscope. Patients in intensive care units have monitors to demonstrate the beating heart, blood pressure, respiration and oxygen in the blood.

Editor: What about the signs of death?

Dr. Byrne: Throughout the ages, death has been and is a negative, an absence -- the state of the body without life. The soul has left the body and decomposition has begun. After death what is left on earth is a corpse. The remains are empty, cold, blue, rigid and unresponsive to all stimuli. There is no heartbeat, pulse or blood pressure. The patient has stopped breathing. There is poor color of the skin, nails, and mucous membranes. Ventilation will not restore respiration in a corpse. A pacemaker can send a signal but it cannot initiate the heartbeat in the corpse. Healing never occurs in a patient that is truly dead.

Editor: When we speak of vital organs, what organs are we talking about?

Dr. Byrne: Vital organs (from the Latin vita, meaning life) include the heart, liver, lungs, kidneys and pancreas. In order to be suitable for transplant, they need to be removed from the donor before respiration and circulation cease. Otherwise, these organs are not suitable, since damage to the organs occurs within a brief time after circulation of blood with oxygen stops. Removing vital organs from a living person prior to cessation of circulation and respiration will cause the donor's death.

Editor: Are there some vital organs which can be removed without causing the death of the donor?

Dr. Byrne: Yes. For example, one of two kidneys, a lobe of a liver, or a lobe of a lung. The donors must be informed that removal of these organs decreases function of the donor. Unpaired vital organs however, like the heart or whole liver, cannot be removed without killing the donor.

Editor: Since vital organs taken from a dead person are of no use, and taking the heart of a living person will kill that person, how is vital organ donation now possible?

Dr. Byrne: That's where "brain death" comes in. Prior to 1968, a person was declared dead only when his or her breathing and heart stopped for a sufficient period of time. Declaring "brain death" made the