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

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

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

THE WITNESS: Hi, this is Dr. Manthei.

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

THE WITNESS: Yes, very well.

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

SCOTT MANTHEI, M.D.

having been duly sworn,

was examined and testified as follows:

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

DIRECT EXAMINATION

BY MR. O'MARA:

Q Please state your name.

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

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

A Yes.

Q Are you a member of the American Medical Association?

A No.

Q Are you a member of the American Osteopathic Association?

A Yes.

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

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

Q And does that limit your practice in any way?

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

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

A Yes.

Q And it has all the certifications?

A Correct.

Q Has your licensure?

A Correct.

Q Has your education?

A Correct.
Q It has your publications?
A Correct.
Q Your professional experience?
A Yes.
Q And it has the listing of the various hospitals that you are licensed by? Or not licensed, but --
A Yes.
Q -- practice. One of those is St. Rose?
A Correct.
Q And that's in Las Vegas area, in Henderson actually?
A Yes. They have three facilities. One is in Las Vegas and two of them are in Henderson.
Q Thank you. May I have this admitted?
THE COURT: You may, yes.
THE WITNESS: I'm sorry, I didn't get the last question.
THE COURT: I'm sorry, the attorney is just approaching the bench to admit your vitae and the Court will admit the document without opposition.
BY MR. O'MARA:
Q Doctor, with whom have you talked about this case?
A I was introduced by Dr. Sharon Frank,

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

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

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

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

A No, that was just affidavit.

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

A Yes, a tracheostomy.

Q And a feeding tube?

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

Q And would that be done by St. Rose?

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

Q Okay. You have privileges at St. Rose?

A Yes.

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

A Not at this time.

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

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

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

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

A Yes, I believe so.

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

THE COURT: All right. Mr. Peterson?

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

THE COURT: Go right ahead.

BY MR. O'MARA:

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

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

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

A Correct.

Q Okay. No further questions, your Honor.

THE COURT: Okay. Mr. Peterson?

MR. PETERSON: Just a couple, your Honor.

CROSS EXAMINATION

BY MR. PETERSON:

Q Dr. Manthei, you just got involved in this

matter, I believe you told me last weekend?

A Two weeks.

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

A Correct.

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

A No, I have not.

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

A No, I have not.

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

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

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

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

Q Okay.

A But that's different than an opinion.

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

A Correct.

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

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

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

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

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

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

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

A I have none.

THE COURT: What was the answer?

THE WITNESS: No, I do not, none.

BY MR. PETERSON:

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

A Yes, I have.

Q Where is that?

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

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

A Correct.

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

A No.

Q No further questions.

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

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

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

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

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

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

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

THE WITNESS: No.

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

MR. O'MARA: Yes, your Honor.

RE-DIRECT EXAMINATION

BY MR. O'MARA:

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

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

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

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

A Correct.

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

A Yes.

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

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

THE WITNESS: That they have not agreed to.

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

THE WITNESS: Correct.

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

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

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

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

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

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

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

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

THE WITNESS: Yes.

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

MR. O'MARA: No, your Honor.

THE COURT: Anything further, Mr. Peterson?

MR. PETERSON: Yeah.

RE-CROSS EXAMINATION

BY MR. PETERSON:

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

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

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

Q Are you talking about Dr. Byrne?

A Correct.

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

A No, not all of them.

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

A Correct.

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

A No.

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

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

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

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

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

Q Let's --

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

Q I'm not asking you to do that.

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

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

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

THE COURT: Go ahead, Mr. Peterson.

BY MR. PETERSON:

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

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

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

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

MR. O'MARA: Objection, your Honor.

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

BY MR. PETERSON:

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

A Yes.

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

A I am not willing to make a clinical judgment on

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

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

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

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

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

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

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

A I don't believe I am, no.

Q Even though your curriculum vitae says that you are?

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

Q I don't have any further questions.

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

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

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

THE WITNESS: No.

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

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

THE COURT: Are you interested in the

neurological information and medical evidence in relation to Aden?

THE WITNESS: Yes.

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

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

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

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

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

MR. O'MARA: No, your Honor.

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

THE WITNESS: You're very welcome.

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

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

THE COURT: Did you recall the discussion of

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

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

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

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

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

THE WITNESS: Yes, ma'am.

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

MR. GEBREYES

having been previously sworn,

was examined and testified as follows:

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

DIRECT EXAMINATION

BY MR. O'MARA:

Q Have you talked to the co-guardian?

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

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

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

Q Did you make arrangements for her to talk on the telephone?

A Well, yes, I did, but I find out that the Court use only a landline which I believe makes it difficult to --

THE COURT: So I don't know about this issue. I don't want it on the record that the Court is denying you access to a witness. Did you call the Court ahead of time to make arrangement to have a telephonic participation by someone in Russia, did you do that, Mr. O'Mara?

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

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

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

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

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

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

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

BY MR. O'MARA:

Q Did you hear the question from the Judge?

A No.

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

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

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

to St. Rose?

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

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

THE COURT: That's fine.

BY MR. O'MARA:

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

A Absolutely, yes.

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

THE COURT: Mr. Peterson?

MR. PETERSON: Just a couple, your Honor.

CROSS EXAMINATION

BY MR. PETERSON:

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

A My niece, her name is Miss Asfaw.

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

A I'd say about a month ago.
Q So sometime in June?
A Yes.
Q Did you speak with her about the prior proceedings, what happened in court here last time?
A Yes.
Q Did you tell her about Dr. Heide's testimony?
A She knows that all along.
Q She knew that all along?
A Yes.
Q Okay. No further questions.
THE COURT: Any further, Mr. O'Mara?
MR. O'MARA: No, your Honor.
THE COURT: Okay. You can have a seat, sir.
Anything further, Mr. O'Mara?
MR. O'MARA: The only thing I can tell you is that I made arrangements with regard to the air flight from American Medical Air in Reno here to make the transfer available and the agreement has been made. He has to sign the contract, but what happens is that they bill Medicaid first, and then if there's a refusal by Medicaid, then he pays for the transportation.
THE COURT: Has Medicaid been approved right now for the hospitalization?
MR. O'MARA: Yes. For the hospitalization,

yes, but not for the air transport.

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

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

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

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

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

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

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

THE COURT: You can?

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

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

MR. PETERSON: No, your Honor.

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

(A recess was taken.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Okay.

UNIDENTIFIED SPEAKER: General and trauma surgeon.

THE COURT: Anything further, Mr. Peterson?

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

be Dr. Floreani.

THE COURT: All right.

ANTHONY FLOREANI, M.D.

having been duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PETERSON:

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

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

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

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

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

A Right, I am not a neurologist.

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

last three months or so?

A Yes, sir.

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

A I am.

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

A Unfortunately, yes, I am.

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

A I am, including the UDDA.

Q Say the last one?

A The Uniform --

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

A One of my partners, Dr. Bacon.

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

A Yes.

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

A In terms of neurologically?

Q Yes.

A No, there has been no change.

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

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

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

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

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

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

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

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

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

A Yes.

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

A Yes.

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

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

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

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

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

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

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

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

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

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

A Yes, unfortunately she does.

Q Thank you very much, Doctor.

THE COURT: Mr. O'Mara?

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

THE COURT: Yes.

CROSS EXAMINATION

BY MR. O'MARA:

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

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

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

A Yes.

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

A That's what it looks like, yes.

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

A Yes.

Q Or evaluation and assessment, correct?

A Yes.

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

A Uh-huh.

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

A That's what it appears.

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

A She's an internist and hospitalist, yes.

Q And she was caring for Aden?

A Yes.

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

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

Q And he's a member of your group?

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

Q Right. And then Dr. Heide is the gentleman

that testified here earlier?

A Correct.

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

A No, I do not believe he is.

Q He's actually an ER specialist?

A Right. Brian Barnes, emergency room physician.

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

A No.

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

A Correct.

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

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

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

A That's what it says.

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

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

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

Q That was the second one.

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

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

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

Q Okay.

A That preceded the apnea testing later done.

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

A Correct.

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

A That's what it says.

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

MR. PETERSON: Nothing, your Honor.

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

MR. PETERSON: Nothing, your Honor.

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

MR. O'MARA: No, your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

feeding tube.

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

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

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

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

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

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

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

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

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

Incredibly he's willing to perform a

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

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

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

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

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

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

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

contravene public policy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to get around precisely those kinds of debates.

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

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

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

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

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

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

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

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

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

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

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

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

Now, many times it doesn't happen where the

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

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

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

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

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

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

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

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

closely.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to be a long shot.

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

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

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

He has concluded that he will conduct one of

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

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

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

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

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

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

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

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

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

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

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

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

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

I will conclude that the restraining order is

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

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

THE COURT: And how much time do you need?

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

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

MR. PETERSON: Yes, your Honor.

THE COURT: Good luck.

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

STATE OF NEVADA)
COUNTY OF WASHOE) ss.

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

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

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

Dianne M. Brumley, CCR

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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.	

EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER

COMES NOW, Fanuel Gebreyes, by and through his counsel, William M. O'Mara, Esq., of The O'Mara Law Firm, P.C., and hereby moves this court, ex parte, for a temporary restraining order that will restrain Defendants, Prime Healthcare Services, LLC, dba St. Mary's Regional Medical Center, from taking any action to remove the Ward and Petitioner's daughter,

Aden Hailu, from the ventilator and to continue proper medical care including, but not limited to, a tracheostomy, gastrostomy, thyroid hormone and proper nutrition to prevent death and also to facilitate her removal from the hospital.

This ex parte motion is made in good faith and based upon the papers and pleadings filed herein, the Declarations of Fanuel Gebreyes and Paul A. Bryne, M.D., and the Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

1. Aden Hailu, the patient in these proceedings, is Fanuel Gebreyes' daughter. Mr. Gebreyes is also her legally appointed guardian, along with her cousin, Metsihate Asfaw.

2. Aden has always taken excellent care of her health. She followed all the doctor's recommendations regarding her health.

3. Aden's health has been excellent other than anemia for which she received a blood transfusion approximately 2 years ago.

4. Aden has always been willing to endure the treatment in order to fight disease, including a blood transfusion.

5. 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.

6. Saint Mary's Regional Medical Center has determined to remove Aden's ventilator.

7. The Co-Guardians have done their best by the Ward over the past ten weeks. They have been at the hospital daily and as much as the hospital would allow.

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

9. It is clear 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, Mr.

Gebreyes 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, these actions have caused additional damage to Aden.

10. The ventilator is helping Aden 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.

11. Mr. Gebreyes has personally observed that his daughter's 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.

12. The ventilator, medications, nutrition and water, are protecting and preserving Aden's life. They are necessary for Aden to live. Without them, she will die. While it is realized that Aden is seriously ill and that she will not live on earth forever, Mr. Gebreyes wants her to live the lifespan given to her by her Creator. He does not want anyone to shorten her life or hasten her death. Mr. Gebreyes prefers that Aden be living at home.

13. On June 2 two doctors informed Mr. Gebreyes that the ventilator would be removed in 2 weeks. The Co-Guardians rejected and objected to this as this will force death on Aden.

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

15. The hospital informed the Co-Guardians they would no longer treat Aden if they refused to follow their recommendations and remove the ventilator. They were told they would have time to find another facility for treatment, but such has not been the case. The Co-Guardians have not had sufficient time, nor have they had assistance in obtaining care for Aden. Further, they were told on May 2, 2015, 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 Mr. Gebreyes' 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.

16. Aden cannot speak for herself at this time; however, there is every reason to believe Aden would want to live as long as she can. It is believed that Aden would not want to shorten her own life and she would not want anyone to impose or force death upon her.

17. Based upon information and belief, it is believed 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.

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

II. LEGAL DISCUSSION

The purpose of a temporary restraining order under NRCP 65 is to preserve the status quo pending court determination. All Minerals Corp. v. Kunkle, 105 Nev. 835, 837-38, 784 P.2d 2, 4 (1989); Baker v. Simonds, 79 Nev. 434, 386 P.2d 86 (1963). An injunction to maintain the status quo is proper if "'injury to the moving party will be immediate, certain, and great if it is denied, while the loss or inconvenience to the opposing party will be comparatively small and insignificant if it is granted.'" *Rhodes Mining Co. v. Belleville Placer Mining Co.*, 32 Nev. 230, 239, 106 P.2d 561, 563 (1910) (quoting *Newton v. Levis*, 79 F. 715 (8th Cir. 1897)).

In determining whether a temporary injunction should be granted, two factors are relevant: (1) is there a reasonable probability that the plaintiffs will prevail on the merits; and (2) are the plaintiffs likely to suffer greater injury from a denial of the injunction than the defendants are likely to suffer from its grant. *Number One Rent-A-Car v. Ramada Inns,* 94 Nev. 779, 780-81, 587 P.2d 1329, 1330-31 (1978); *Revlon*, 506 A.2d at 179; *Robbins v. Superior Court,* 38 Cal. 3d 199, 206 (1985); *see also Heckmann v. Ahmanson*, 168 Cal. App. 3d 119, 125 (1985). Put another way, "[i]f the denial of an injunction would result in great harm to the plaintiff, and the defendants would suffer little harm if it were granted, then it is an abuse of discretion to fail to grant the preliminary injunction." *Robbins*, 38 Cal. 3d at 205.

1. *Injunctive Relief Will Maintain the Status Quo*

Fanuel Gebreyes, is one of the Co-Guardians of Aden Hailu, and has been advised that the hospital will remove Aden from the ventilator on Friday, July 3, 2015, at 5:00 p.m., pursuant to an

order from the Honorable Connie Steinheimer. A restraining order is necessary to stop their action and keep the status quo.

2. ***Strong Likelihood of Success on the Merits***

There is a strong likelihood that Petitioner will prevail on the merits. Indeed, since the order of Judge Steinheimer, Fanuel Gebreyes has obtained a medical opinion of the proper medical care for the Ward, his daughter, Aden Hailu (see Declaration of Paul A. Byrne, M.D., attached to the Petition).

3. ***Plaintiff Will Suffer Damage From Denial of this Motion***

Here, Fanuel Gebreyes can show a high probability of injury absent judicial intervention as Movant will forever be deprived of the opportunity of her right to life as guaranteed in the Nevada and Untied States Constitutions by the 14th Amendment (Due Process Clause).

See Gimbel v. Signal Cos., 216 A.2d 599, 603 (Del. Ch.), aff'd, 316 A.2d 619 (Del.1974).

In this case, Movant, Mr. Gebreyes, as the father and guardian of Aden Hailu, will suffer irreparable harm because once the ventilator is removed Aden will die and she will not be given an opportunity to heal.

As such, without injunctive relief to preclude Prime Healthcare Services, LLC from removing Aden Hailu from the ventilator, the Ward will be severely and irreparably harmed.

4. ***Only a Nominal Bond is Required***

While a bond may be required as a condition of issuance of a preliminary injunction, the amount of the bond is within the Court's discretion, based on damages which may actually be suffered as a result of the injunction. NRCP 65(c). The enjoined party must present admissible, competent, qualitative and quantitative evidence of harm that an injunction would cause "by any party who is found to have been wrongfully enjoined or restrained. *Id.* Here, the hospital has already violated the instructions of the father and now guardian when they performed the apnea test. Thus, there is no reason to believe that without a restraining order Prime Healthcare will not remove the ventilator. Therefore, a bond amount of $100.00 should be sufficient.

III. CONCLUSION

For the foregoing reasons, Petitioner's motion for temporary restraining order should be granted. Prime Healthcare Services, LLC should 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.

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.

/s/ William M. O'Mara
WILLIAM M. O'MARA, ESQ.

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

Attorneys for Plaintiff

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

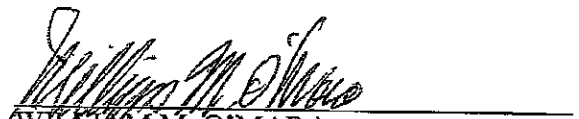
_____ Electronically through the Court's ECF system

_____ 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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Exhibits

HEARING: EMERGENCY HEARING

TITLE: **GUARD: ADEN HAILU**
CO-GUARDIAN: **FANUEL GEBREYES**
INTERESTED PARTY: **SAINT MARY'S MEDICAL CENTER**

ATTY: **DAVID O'MARA, ESQ.**
ATTY: **WILLIAM PETERSON, ESQ.**
JANINE PRUPAS, ES.

WARD: **ADEN HAILU**
Case No: **GR15-00125** Dept. No: **12** Clerk: **J. MARTIN** Date: **7/2/15**

Exhibit No.	Party	Description	Marked	Offered	Admitted
1-A	INTERESTED PARTY	"JUDGE RULES AGAINST BRAIN-DEAD GIRL'S FAMILY" – SF GATE	7/2/15	NO OBJ	7/21/15
1-B	INTERESTED PARTY	"SHE'S VERY MUCH A LIVING PERSON" LIFESITE	7/2/15	NO OBJ	7/21/15
1-C	INTERESTED PARTY	"STORIES FROM THE TRAUMA BOY"	7/2/15	NO OBJ	7/21/15
1-D	INTERESTED PARTY	"JAHI MCMATH, CAN YOU MOVE?" RENEW AMERICA	7/2/15	NO OBJ	7/21/15
1-E	INTERESTED PARTY	"DIRECTIONS TO PROTECT AND PRESERVE LIFE" – LIFE GUARDIAN FOUNDATION	7/2/15	NO OBJ	7/21/15
1-F	INTERESTED PARTY	"EXECUTION IN A NEW YORK HOSPITAL" RENEW AMERICA	7/2/15	NO OBJ	7/21/15
1-G	INTERESTED PARTY	"JAHI IS ALIVE—PRAISE THE LORD AND PASS THE AMMUNITION" RENEW AMERICA	7/2/15	NO OBJ	7/21/15
1-H	INTERESTED PARTY	CHRIST OR CHAOS, DR. PAUL BYRNE'S REFUTATION	7/2/15	NO OBJ	7/21/15
1-I	INTERESTED PARTY	"TRUTH ABOUT ORGAN DONATION"	7/2/15	NO OBJ	7/21/15
2	INTERESTED PARTY	"QUINLAN RE-EXAMINED" RENEW AMERICA	7/2/15	NO OBJ	7/21/15
3	INTERESTED PARTY	"MORPHOLOGICAL AND FUNCTIONAL ALTERATIONS OF THE HYPOTHALAMIC-PITUITARY SYSTEM" SPRINGER LINK	7/2/15	NO OBJ	7/21/15
4	INTERESTED PARTY	SM PLUM PROGRESS NOTE	7/2/15	NO OBJ	7/21/15

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Exhibit No.	Party	Description	Marked	Offered	Admitted
5	INTERESTED PARTY	ASSESSMENT/PLAN	7/2/15	NO OBJ	7/21/15
6	INTERESTED PARTY	PROGRESS NOTES FOR ADEN HAILU	7/2/15	NO OBJ	7/21/15
7	INTERESTED PARTY	DECLARATION IN SUPPORT OF PETITION OF ORDER AUTHORIZING MEDICAL TREATMENT, RESTRAINING ORDER AND PERMANENT INJUNCTION	7/2/15	NO OBJ	7/21/15
8	INTERESTED PARTY	BIO-ETHICS CONSULTATION	7/21/15	NO OBJ	7/21/15
A	GUARDIAN	T. BRIAN CALLISTER, MD CURRICULUM VITAE	7/21/15	NO OBJ	7/21/15
B	GUARDIAN	SCOTT MANTHEI CURRICULUM VITAE	7/21/15	NO OBJ	7/21/15

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

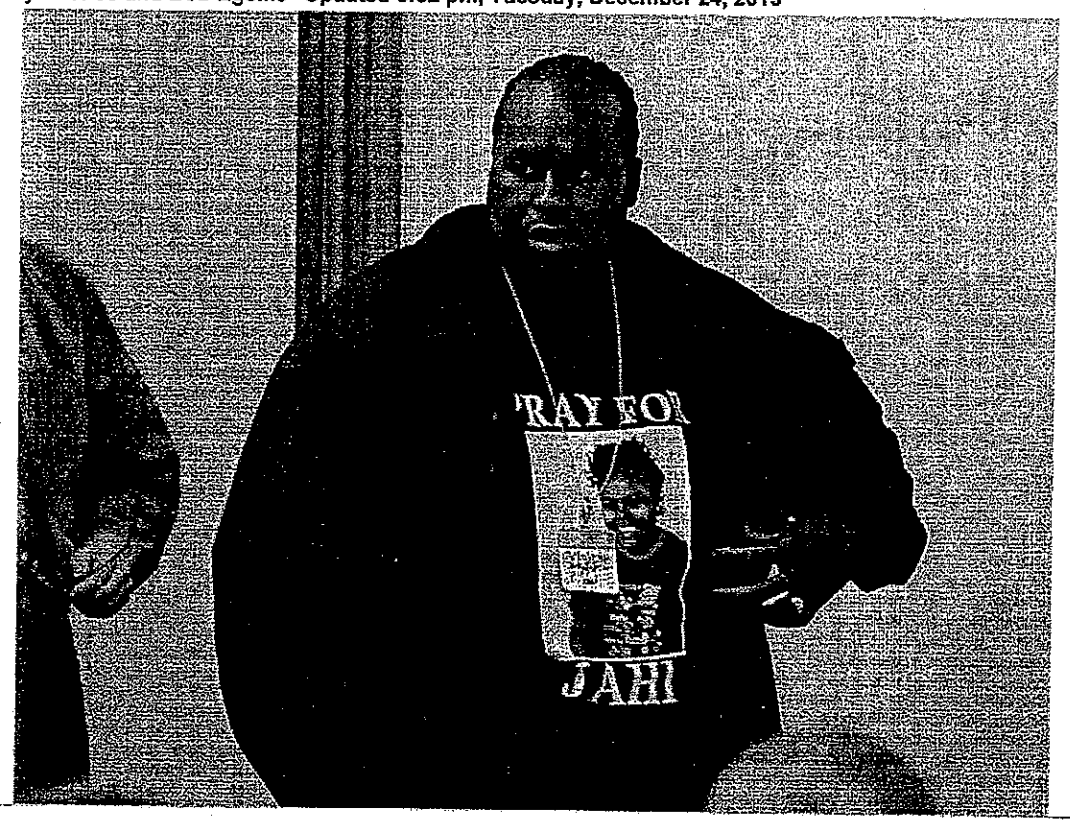
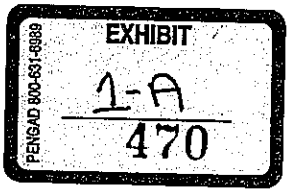


IMAGE 1 OF 14

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.

"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."

Carolyn Jones and Bob Egelko are San Francisco Chronicle staff writers. E-mail: carolynjones@sfchronicle.com, begelko@sfchronicle.com

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

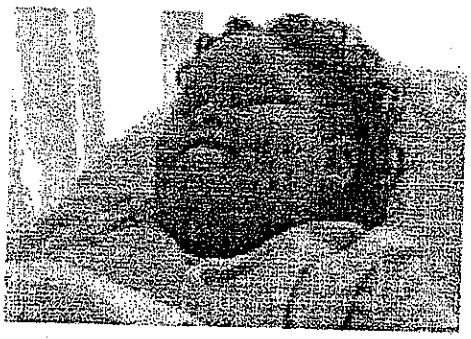
'She's very much a living person': Doctor champions 13-yr-old 'brain dead' girl on ventilator

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.

"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, Vai 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.

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,

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!

View my complete profile

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/140818

2. Brain death worldwide: accepted fact but no global consensus in diagnostic criteria. Neurology. 2010 Jan 5;74(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."

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.lc/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

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.ncbcenter.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

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

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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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.

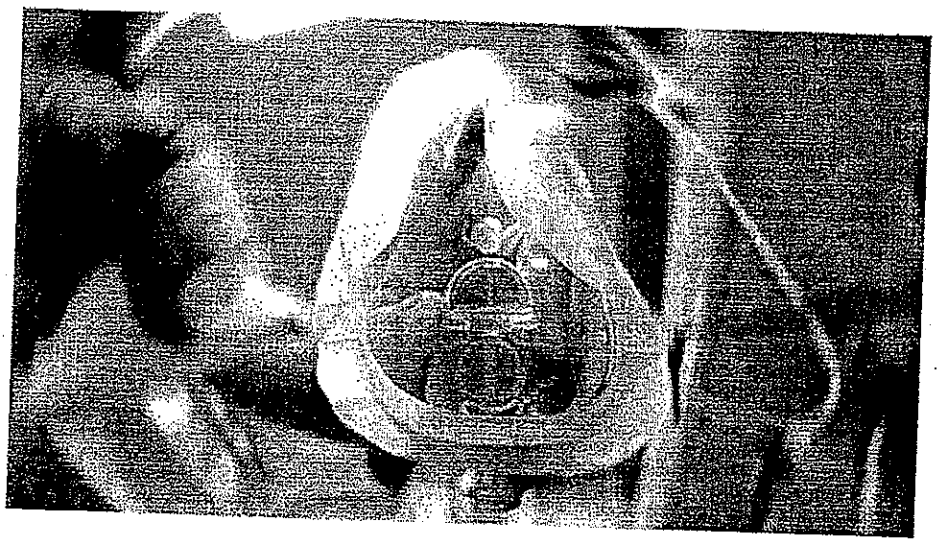
The public must be wondering how Jahi could be dead, and respond by moving her foot when an ice-cube is applied 3 weeks later. Does anyone believe that a cadaver's foot could move? No, Jahi is not in a morgue and she is not under the care of a mortician.

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

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.

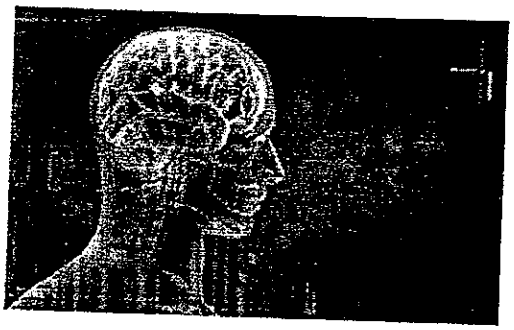
A ventilator is commonly mislabeled a respirator. After true death, neither chest compressions nor a ventilator can be effective. Air can be pushed into the airways and lungs. Elastic recoil might push air out for a few cycles, but then elasticity is gone and air cannot get out. After true death there 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.

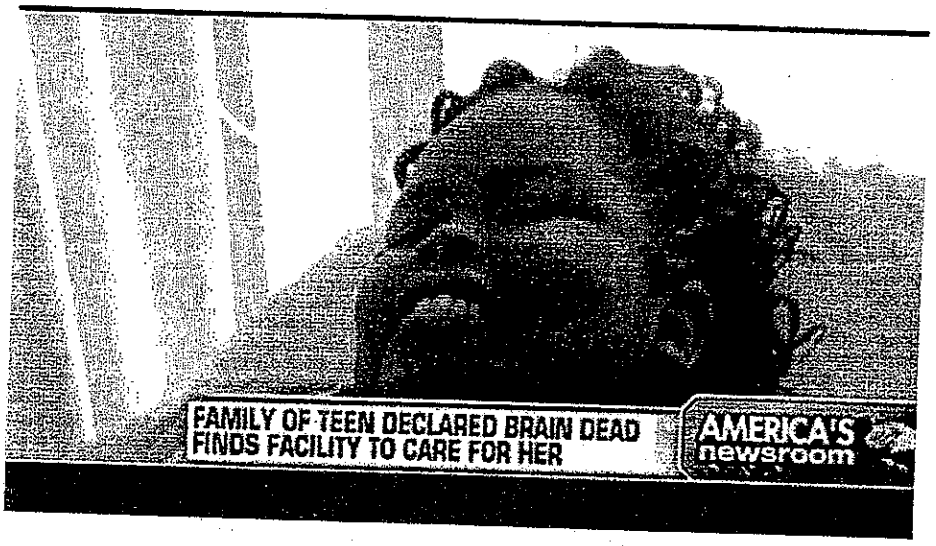


Prior to true death patients are sometimes labeled "as good as dead," "soon to be dead," "brain dead," "cardiac dead," "probably dead," "apparently dead," etc., especially when there is interest to convert such patients into organ donors. None of these patients with heartbeat, respiration and/or circulation 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;

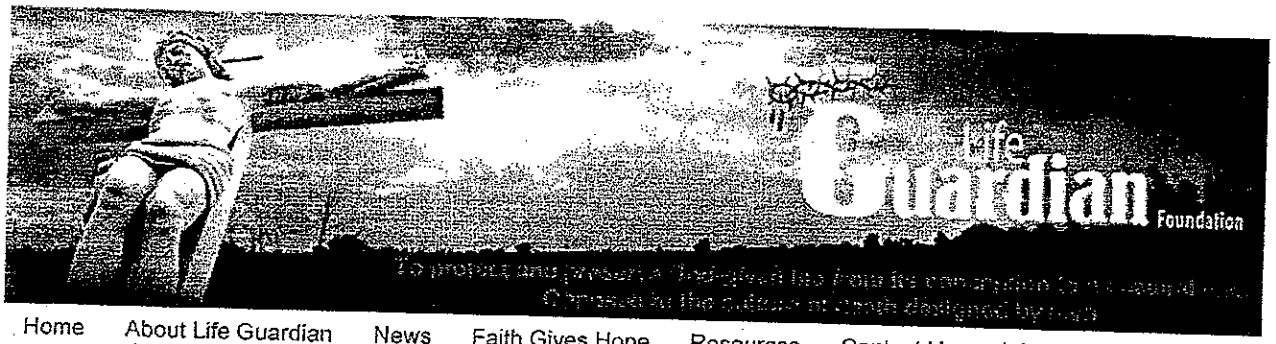
only slowed or delayed by cooling, embalming, mummifying, salting, etc.

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

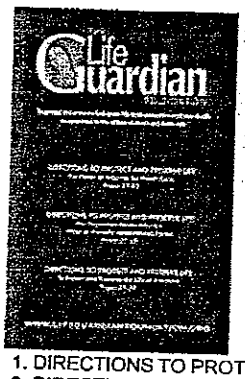


MISSION STATEMENT:

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.
Read More....Click Here

Medical Card - Directions to Protect and Preserve Life
"Brain Death" - The Simple Truth
"Brain Death" - It's NOT Death!
Beyond "BRAIN DEATH" (pdf)
Catholic World Report (pdf)
CWR Essay (pdf)
The US UAGA 2006 (pdf)
Choose Life - Not Death (pdf)
Excision of Vital Organs (pdf)

Directions To Protect and Preserve Life



Your "refusal" for organ donation must be documented.

Upon registering at the DMV your verbal decline, stating "no" when asked whether or not you wish to be an organ donor, is not honored. According to the language of the law, Revised Anatomical Gift Act (2006), you must "opt-out," documenting your "refusal" in writing using "explicit language," otherwise, it is "presumed" that you have consented to be an organ donor to be utilized for the purpose of "organ transplantation, education and research."

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

1. DIRECTIONS TO PROTECT AND PRESERVE LIFE FOR POWER OF ATTORNEY FOR HEALTH CARE Click Here
2. DIRECTIONS TO PROTECT AND PRESERVE LIFE FOR DEPENDENT PERSON WHO IS A MINOR OR MENTALLY INCAPACITATED PERSON Click Here
3. DIRECTIONS TO PROTECT AND PRESERVE LIFE; TO PROTECT AND PRESERVE THE LIFE OF EVERYONE [OPT-OUT CARD] Click Here

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).

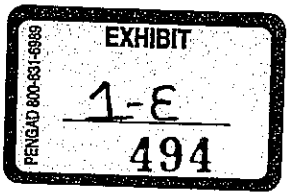
CRITICAL INFORMATION CONCERNING "BRAIN DEATH" AND ORGAN TRANSPLANTATION

For over forty years there has been a deadly code of silence pertaining to "brain death." Behind closed doors a controversy raged. Many of those in the medical field opposed this reinvention of death. The controversy continues...

"Brain death" was invented for the sole purpose of organ transplantation, living human medical experimentation and a means in which measures to sustain life could be legally withdrawn. It was the first legal form of euthanasia in the US. This deadly code of silence has been broken.

It is time to inform the Public of the Truth....

Order Your Book Today!



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.

Yes, I would like to order the book "Finis Vitae" for a donation of: $20/ea. Soft Cover (plus $8/S&H)

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Order The Booklet in Printed Format Today!

Booklet includes 5 brochures and directions to protect and preserve life.

Brochures:
- Facts About Being An Organ Donor
- Do Your Organs Belong To The Government?
- Make An Informed Decision
- Manipulation of Beginning and End of Human Life
- Catholic Teaching on Death and Organ Transplantation

Directions to Protect and Preserve Life for:
- Power of Attorney for Health Care
- For Dependent Person Who is a Minor or Mentally Incapacitated Person
- To Protect and Preserve the Life of Everyone

Yes, I would like to order the printed booklet in the following quantity for a donation of $3.00 per booklet. (Includes shipping/handling charges):

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Yes, I would like to order the printed booklet (Spanish Language Version) in the following quantity for a donation of $3.00 per booklet. (Includes shipping/handling charges):

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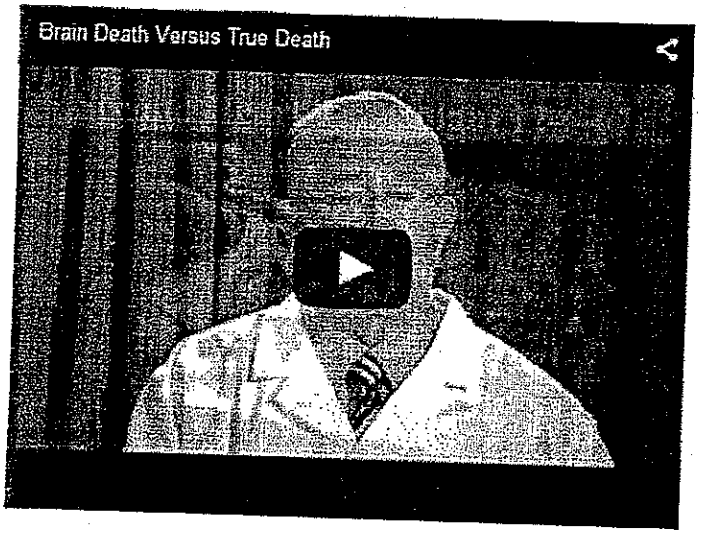
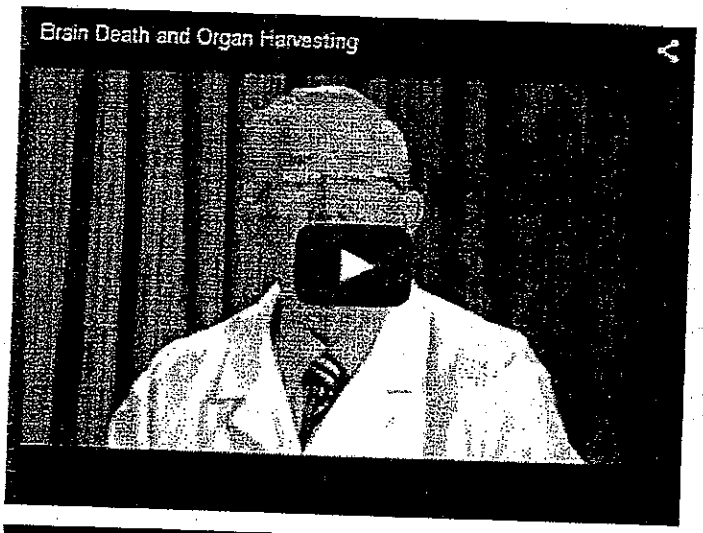
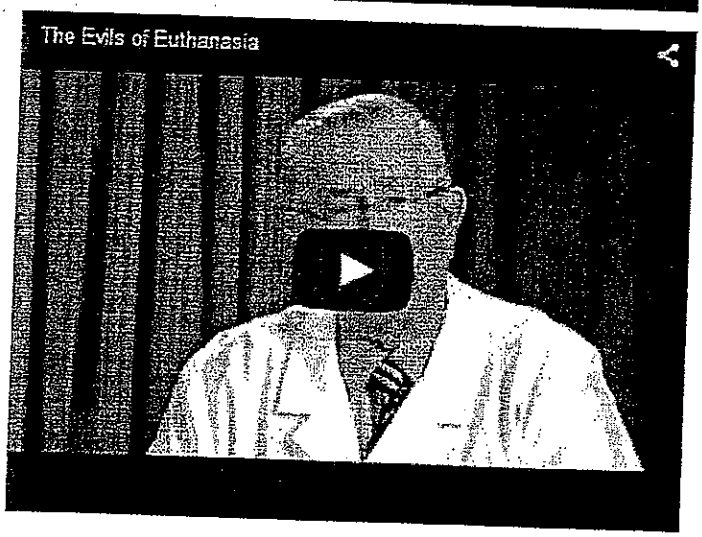
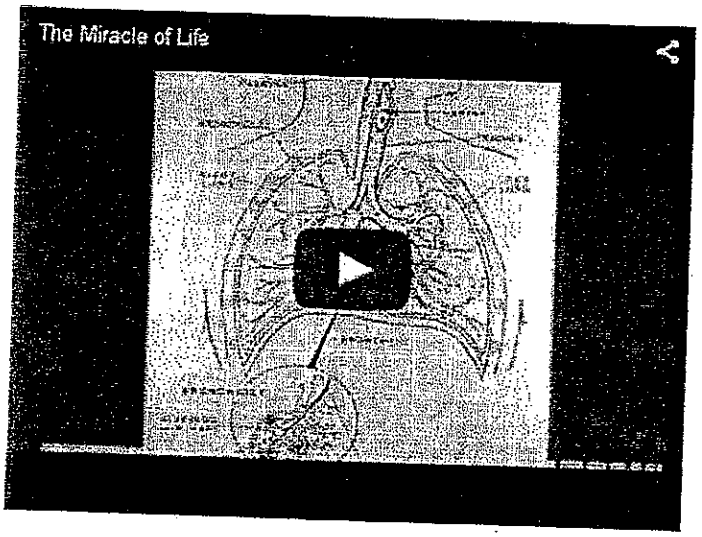
American Life League
Presents
Dr. Paul Byrne 4-Part video instructional series:


Brain Death Versus True Death


Brain Death and Organ Harvesting


The Evils of Euthanasia



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.
Hour1 Hour2
Hour1 Hour2
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 Bryne - Life Guardian Foundation
Click here to listen

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
http://www.lifesitenews.com/ldn/2009/feb/09021608.html

New England Journal of Medicine: 'Brain Death' is not Death - Organ Donors are Alive
http://www.lifesitenews.com/ldn/2008/aug/08081406.html

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."

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Read related LifeSiteNews.com coverage:

Doctor to Tell Brain Death Conference Removing Organs from "Brain Dead" Patients Tantamount to Murder
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Conference may Begin to Sway Vatican Opinion Against Brain Death: Eminent Philosopher
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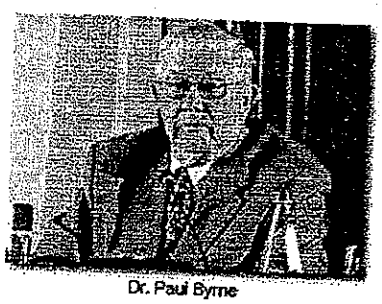

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Cardinal Sergio Sebastiani and Cardinal Francis Arinze were in attendance at the "Signs of Life" conference.

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http://www.lifesitenews.com/ldn/2009/feb/09021607.html

Conference may Begin to Sway Vatican Opinion Against Brain Death: Eminent Philosopher
http://www.lifesitenews.com/ldn/2009/feb/09022404.html

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.

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

APPELLANT'S APPENDIX

VOLUME II

(Bates Stamps 251-500)

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Reno, NV 89501
Telephone: 775/323-1321
Facsimile: 775/323-4082
Attorneys for Appellant

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
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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:

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__X__ Electronically through the Court's ECF Systems

addressed as follows:

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DATED: August 27, 2015.

/s/ Valerie Weis

VALERIE WEIS

WORD INDEX

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

ADEN HAILU,

An Adult Ward.

FANUEL GEBREYES,

Appellant,

vs.

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

Respondent.

No. 68531

District Court Case No. GR15-00125

NOTICE OF FILING JULY 21, 2015 HEARING TRANSCRIPT

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

Dated: August 7, 2015

SNELL & WILMER L.L.P.

By: _____

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CERTIFICATE OF SERVICE

This document was filed electronically with the Nevada Supreme Court on August 7, 2015. Electronic service of this document shall be made in accordance with the Service List as follows:

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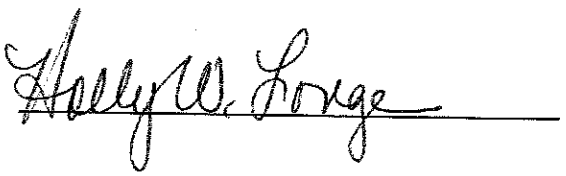

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IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

-o0o-

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

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TRANSCRIPT OF PROCEEDINGS

July 21, 2015

Reno, Nevada

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

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A P P E A R A N C E S

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I N D E X

***

RENO, NEVADA, JULY 21, 2015

***

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

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

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

THE COURT: Pleased to see you.

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

MR. GEBREYES: Fanuel Gebreyes.

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

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

correct?

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

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

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

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

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

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

may not have.

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

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

MR. O'MARA: Sorry.

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

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

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

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

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

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

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

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

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

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

THE COURT: But you knew that going into it.

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

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

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

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

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

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

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

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

THE COURT: Is he here now?

MR. O'MARA: Yes, your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. PETERSON: Yes. Thank you.

(A recess was taken.)

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

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

BRIAN CALLISTER, M.D.

having been duly sworn,

was examined and testified as follows:

EXAMINATION

BY MR. O'MARA:

Q Please state your name.

A Thomas Brian Callister.

Q And are you a doctor?

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

Q And how long have you been a doctor?

A Since 1988.

Q And is this your curriculum vitae?

A Yes, it is. Yes, sir.

Q Exhibit 1.

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

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

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

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

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

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

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

BY MR. O'MARA:

Q Do you have any specialties?

A Internal medicine and hospitalist medicine.

Q Do you take care of acute care patients?

A Yes, I take care of acute care cases.

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

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

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

A I believe so, yes.

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

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

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

A Yes, that's my understanding.

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

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

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

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

Q Okay. What initial care would you believe is

necessary?

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

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

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

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

Q Do you have any other opinions, Doctor?

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

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

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

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

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

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

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

THE COURT: Sustained. Sustained.

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

THE COURT: Mr. Peterson?

MR. PETERSON: Thank you, your Honor.

CROSS EXAMINATION

BY MR. PETERSON:

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

A Sure.

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

A Okay.

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

A By telephone.

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

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

Q Okay. And then subsequent to talking with Dr.

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

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

Q Yes.

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

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

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

BY MR. PETERSON:

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

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

Q So you will not be her doctor?

A I will not be her doctor.

Q And you have not been her doctor?

A I have not been her doctor.

Q Okay. Subsequently your next involvement in

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

A Yes.

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

A 11:00, right.

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

A Yes.

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

A Yes.

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

A Correct.

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

A Three of them.

Q The MRI?

A Yes.

Q The apnea test?

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

Q Did you know she had two apnea tests?

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

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

A No.

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

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

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

A Correct.

Q And you looked at the neurological notes?

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

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

A Correct.

Q You spent about 20 minutes examining her, correct?

A Twenty to 30 minutes, yes.

Q The first thing you did was you took an initial

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

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

Q All right. You examined her lungs?

A Yes.

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

A Yeah.

Q Lungs were working?

A Yes.

Q Which would be consistent with a ventilator, correct?

A Yes.

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

A Yes.

Q Also consistent with being operated under a ventilator?

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

Q Okay.

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

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

A Not directly. Indirectly.

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

A No.

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

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

Q You're not an expert in neurology?

A No.

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

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

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

A Yes.

Q What is it?

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

Q What is your understanding?

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

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

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

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

BY MR. PETERSON:

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

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

Q Based upon those criteria, do you agree that

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

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

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

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

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

MR. O'MARA: Not a medical standard.

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

BY MR. PETERSON:

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

A From a legal definition?

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

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

Q All right. Then you would not be able to

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

A Not as a neurologist, no.

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

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

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

A No procedures.

Q Just tests?

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

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

A Not first, but I did examine her arm.

Q And got no neurological response?

A No.

Q You examined her hand?

A Yes.

Q Got no neurological response?

A No.

Q You examined her feet?
A Yes.
Q Got no neurological response?
A No.
Q You did a pressure test on her fingers and toes?
A Yes.
Q You got no neurological response?
A Correct.
Q You tested the reflex on her knees?
A Yes.
Q You got no neurological response?
A Correct.
Q You did a Babinski test?
A Yes.
Q You got no neurological response?
A Correct.
Q The Babinski test is a test that you just rub your hand on the plantar area of the foot?
A Correct.
Q Normally the response you get would be a curling of the foot, correct?
A Correct.
Q You got none of that, correct?
A Yes.

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

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

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

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

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

A Generally, if it's untreated or --

Q You would expect Aden Hailu's brain --

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

MR. PETERSON: I'm sorry.

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

BY MR. PETERSON:

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

A It would appear so.

Q Does that not result in necrosis of the brain?

A It can.

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

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

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

A Right.

Q You performed two of those, did you not?

A Yes.

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

A Yes.

Q Got none, correct?

A Correct.

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

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

A Correct.

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

A Correct.

Q That did not happen here, correct?

A No.

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

A It can be one of many, many signs.

Q All right. The other --

A It cannot be used solely to determine brain death.

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

A Pupillary reflex.

Q Got none, correct?

A Right.

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

A They could be.

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

A They can be.
Q They're either consistent or not consistent.
A It depends on the situation. We have --
Q If you got a response, it would not be consistent with brain death, would it not?
A That's true.
Q Then if you do not get a response, why wouldn't that be consistent with brain death?
A It would be consistent with a severe metabolic encephalopathy as well with severe cerebral edema.
Q And none of that is reflected in the medical record, is it?
A No.
Q And if there was such a thing, you would see it in the medical records, would you not?
A Not necessarily.
Q Do you have any occasion at all that she suffered from such a thing?
A No.
Q Thank you.
A The one thing I should be able to mention where I think it's very pertinent to your line of questioning, if I may add, is the fact that we have one neurology group and one pulmonary group that's been managing and making the recommendations and the interpretation and

clinical opinion was of one particular neurologist.

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

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

A No, not at all.

Q They're competent?

A Not at all.

Q They are competent?

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

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

A No, I am not.

Q You're suggesting they may be biased?

A I don't know.

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

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

Q Let's talk about coma. Is she in a coma?
A Yes.
Q Do you recognize a coma as one of the three signs?
A Yes.
Q Is the coma irreversible?
A I don't know.
Q To a medical degree of certainty, would you agree that it looks like it's irreversible?
A It look like it's irreversible, but I am not certain of that.
Q Thank you. After coma, brainstem reflexes, a number of tests to determine brainstem reflexes. You performed some of those, correct?
A Yes, I did.
Q The brainstem reflex test that you undertook which is part two of the American Association of Neurology test indicates no response, no reflexes from the brainstem, correct?
A Correct.
Q Consistent with brain death, right?
A It can be, yes.
Q The last one, apnea test. You only saw the record on one apnea test, right?
A From May 28th, correct.

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

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

Q Thank you.

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

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

A Correct.

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

A Most of them do. There are always exceptions.

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

A No.

Q But back to your --

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

him to finish his answers?

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

MR. PETERSON: I'm sorry.

THE COURT: I'm taking notes.

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

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

BY MR. PETERSON:

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

A Except for the EEG.

Q The EEG was performed before both apnea tests?

A I understand.

Q And they were early on, like first week of

April?

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

Q And they were gradually deteriorating you said?

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

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

A Yes.

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

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

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

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

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

happen to her when she's there?

A What I understand --

Q From whom?

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

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

A No.

Q Do you know who he is?

A No.

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

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

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

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

Q Thank you. No further questions.

THE COURT: Mr. O'Mara?

RE-DIRECT EXAMINATION

BY MR. O'MARA:

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

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

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

THE COURT: It would be call empirical?

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

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

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

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

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

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

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

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

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

same time.

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

BY MR. O'MARA:

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

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

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

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

THE COURT: And what is LTAC, sir?

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

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

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

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

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

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

THE COURT: Okay. Mr. O'Mara?

BY MR. O'MARA:

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

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

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

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

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

THE COURT: Any follow-up on my questions that

you weren't given an opportunity --

MR. PETERSON: Just one, your Honor.

RE-CROSS EXAMINATION

BY MR. PETERSON:

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

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

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

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

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

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

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

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

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

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

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

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

A Well --

Q Answer that question.

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

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

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

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

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

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

you one --

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

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

Q Well --

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

Q No, no --

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

Q Let me start over again.

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

A Sure.

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

American Association of Neurology. Can you accept that?

A I understand that.

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

A No, I understand.

Q You understand that?

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

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

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

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

A Okay.

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

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

check the box criteria statement, it is true.

Q Thank you. That's all I want.

A Okay.

RE-DIRECT EXAMINATION

BY MR. O'MARA:

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

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

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

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

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

THE WITNESS: Thank you.

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

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

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

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APPELLANT'S APPENDIX

VOLUME II

(Bates Stamps 251-500)

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Docket 68531 Document 2015-26123

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 Iniunction	07.01.15	I	001-007
Emergency Petition for Order Authorizing Medical Care, Restraining Order and Permanent Iniunction	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 Iniunction	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
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List of District Court Exhibits	07.02.15	II	468-469
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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:

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__X__ Electronically through the Court's ECF Systems

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DATED: August 27, 2015.

/s/ Valerie Weis

VALERIE WEIS

It's interesting that in this article they talk about an autopsy, and then they put in something about "extensively necrotic after the sixth day of brain death." And all that goes through my mind is how can you have an autopsy after death and then talk about the sixth day of brain death? I don't understand that. But that's what's in that article.

Q. They're inconsistent, aren't they?

A. It's what?

Q. They are inconsistent.

A. Yes.

Q. The two concepts.

A. Right.

Q. You didn't write this article.

A. No, I didn't write that article. It's in the literature, though.

MR. O'MARA: That's all the questions I have, Your Honor.

THE COURT: All right. Thank you very much, sir. You're free to sit down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Would you like to sit here? Because you may hear better than if you sit in the --

THE WITNESS: Yeah.

THE COURT: -- back of the courtroom.

THE WITNESS: I was -- thank you very much.
THE COURT: You're welcome.
THE WITNESS: You're kind to do that.
THE COURT: Feel free to sit here.
THE WITNESS: Yes.
THE COURT: Okay. Mr. O'Mara, anything further?
MR. O'MARA: No, Your Honor.
THE COURT: All right. Mr. Peterson.
MR. PETERSON: Yes, Your Honor. I will call Dr. Aaron Heide, please.
THE COURT: Dr. Heide, you may approach the chair. If you don't mind raising your right hand to be sworn in.

AARON HEIDE,
having been duly sworn,
was examined and testified as follows:

THE COURT: Dr. Heide, the microphone is this. There's water and cup and tissues there.
THE WITNESS: Thank you.
THE COURT: You're welcome.

DIRECT EXAMINATION

BY MR. PETERSON:

Q. Dr. Heide, please tell the Court who you are. If you could spell your name as well.

A. I'm Dr. Aaron Heide. A-a-r-o-n, H-e-i-d-e. I'm a medical doctor. I'm director of neurology and stroke at Saint Mary's Medical Center.

Q. Okay.

THE COURT: All right. Dr. Heide, I'm sorry about this equipment, but if you can skooch this way --

THE WITNESS: Yes.

THE COURT: -- or lilt this way, then you'll be picked up better.

BY MR. PETERSON:

Q. Your position --

MR. O'MARA: Your Honor, may I add? I notice that you brought a stack of notes and papers with you. Can you tell --

THE COURT: Will you just put them --

MR. O'MARA: -- the Court what they are?

THE COURT: -- on the bench sir? Thank you.

THE WITNESS: Here?

THE COURT: Yes. Just put them right there.

MR. PETERSON: I think counsel, I think he wanted to know what they were.

THE COURT: Well, there will be no reference until there's a reference.

MR. PETERSON: Okay.

THE COURT: But for now, let's leave them above the bench.

BY MR. PETERSON:

Q. Your position one more time.

A. Director of neurology and stroke at Saint Mary's Medical Center.

Q. And what does that entail?

A. That entails directing all of your neurology services and directing the national accredited stroke center at Saint Mary's.

Q. What is neurology?

A. Neurology is the study of brain and all that derived of.

Q. Are you -- tell, tell the Court a little bit about your educational background, the qualifications to be, hold the position that you hold.

A. Board certified in neurology and board certified in vascular neurology.

Q. What's the difference, first?

A. Vascular neurology is a specialized board recognized by the American Board of Medical Specialities with regards to stroke and vascular systems to, to the

neurology center. And that also includes a background and expertise in neuroimaging, vascular ultrasound, and neurocritical care.

Q. Okay. Back to your credentials and background education, just a bit.

A. Medical school at the University of Washington. I did my neurology training through New England Medical Center in Tufts. My stroke fellowship was at Lahey Medical Center in Burlington, Massachusetts.

Q. Okay. And you look awful young, so it probably isn't too long. A little bit about your professional experience after you finished your residency.

A. After I finished my residency I did my stroke fellowship, which included neurocritical care and neuroimaging and vascular ultrasound at Lahey Medical Center in Burlington, Massachusetts. I proceeded --

MR. O'MARA: I'm sorry. Could I ask him to speak a little slower, Your Honor?

THE COURT: Do you mind, sir?

THE WITNESS: If it's possible. I'm used to this. I apologize.

MR. O'MARA: I know. You're from the east coast.

BY MR. PETERSON:

Q. Pretend that you're not dictating into a machine.

A. I will, I will do my best. I proceeded, in 2003, to go back to Seattle, Washington, where I was director and starter of one of the first national accredited stroke centers in the nation at Valley Medical Center in Renton, Washington, thereby directing several stroke centers since then, opening my medical practice in private practice for eight years in Renton, Washington. For the past year I have now held that title that I told you at Saint Mary's Medical Center.

Q. Okay. Now, are you familiar with -- you've been in the courtroom, so you know this case is all about Aden, Aden Hailu; correct?

A. Correct.

Q. Tell the Court about your involvement, what was your first involvement? And if you could just generally describe your involvement with Aden Hailu from the time you first started with her.

A. I, I've, just for the Court's reference, I've made reference to my clinical notes and reviewed my clinical notes. I do not have -- I have them in my pile, and I would wonder if I would be able to have access during this testimony at any point to --

THE COURT: If your memory fails you, you may let the attorney know that.

THE WITNESS: I appreciate that. For my

general reference, I was involved in her case, I believe the first initiation of the case was on April 12th, 2015, when I was first able to examine Aden.

BY MR. PETERSON:

Q. What were the circumstances that she presented? How did you -- why you and what happened?

A. April 12th was actually my return to the clinical service. I perform the vast majority of inpatient services at Saint Mary's. Aden presented on the service while I was not present for inpatient service. There was another neurologist. Thereby, I was not present at the initial presentation of Aden. I came on the case April 12th --

Q. Okay.

A. -- rather than April --

Q. Tell the Court when you first -- April 12th. She came in April 1st, we all know. Tell the Court what the situation, her condition was at that time. If you remember. If you don't, I don't think counsel would object to you looking at your notes, but --

MR. O'MARA: I don't. I just need to know that he is.

THE COURT: If you don't remember, you may ask to look at your notes.

THE WITNESS: I would like to review my

notes for, for very specific details, if I may.

MR. O'MARA: That's fine.

THE WITNESS: So my initial assessment from April 12th was, was also an initial consultation under vascular neurology. Meaning a specialized service. Not just neurology, but actually neurology in addition to vascular neurology, with my specialty. So it was a de novo consult for a new and additional specialty.

I reviewed the case dating back to April 1st, not just the sense of picking up service from my neurologist partner, but in addition to a de novo consultation, as if it was a new medical specialty. So I reviewed all the medical records, including imaging, at that time.

BY MR. PETERSON:

Q. And imaging is a medical term for --

A. I reviewed her imaging, meaning MRI, CT, of her brain.

Q. Okay. And did you form any opinions or conclusions at that time?

A. I, I conclude that she received a severe, catastrophic anoxic, or lack of brain oxygen damage, to her brain at that time.

Q. Okay. And then were you the principal doctor that was responsible for the follow-up for that period,

on after?

A. Correct.

Q. Okay.

A. As the neurologist and vascular neurologist. Not necessarily the other team members. There's internal medicine, pulmonary, critical care.

Q. Okay. And again, if you, what I'd like to do is just get a general overall narrative of the course of, of the, of the treatment, or the progress of her case during the period of time up to the present. That may be too much information, but we don't need to get into details. Just in a general way, if you can do that.

A. From a general sense, when I came on service she had severe neurological injury. She was not, based on the classification that we're dealing with today, classified under the brain death, or death by neurological criteria, but she was rapidly declining at that time.

Q. Okay. Then generally, if you -- when she was rapidly declining -- meaning, what, certain vital signs were diminishing in intensity scope, or something?

A. Her neurological findings and functions were, were disappearing.

Q. Okay. And so, again, if you would follow-up on that. That's what you noticed over, over a period of

time in your treatment. Did it get progressively worse, all of a sudden stop? Or if you could just kind of bring us up to the, up to date, what happened.

A. So from my general knowledge, but also reviewing through my notes, within the first 48 hours, based on my notes here, she had declined from having some neurological function to, based on my expertise and examination, to having no neurological function.

Q. When you say "no neurological function," you know, that's a medical term as well. We know what "neurological" is, we know what "function" is, but could you generally put a little color on that? What does it mean, that there's no neurological function?

A. Correct. I do need to be more specific, because there's still peripheral nerve function and such of that. What I mean by that is based on the criteria for cerebral cortical, subcortical brainstem function were absent at that time.

THE COURT: Can I just interject? You said within the first 48 hours. What time frame are you referring to?

THE WITNESS: I'm referring to me being on the case the 12th.

THE COURT: From the 12th.

THE WITNESS: From the 12th, going to, what

looks like -- excuse me, 13th. It looks like 13th, 14th, 15th. That's where I started to consider that she had no functional neurological --

THE COURT: Okay.

THE WITNESS: -- function based on --

THE COURT: Sorry, Mr. Peterson.

THE WITNESS: -- the criteria.

BY MR. PETERSON:

Q. Yeah. You, I asked you to explain it, and you did, but you used similar abstruse terms, cortical, cortex, something else, absence of those, which also lacks certain meaning to laymen.

A. So, so --

Q. Me, anyway. So what, what do you mean by that? I mean, if I were looking at it, you were explaining it to me as a patient, what do you mean?

A. I think to get to the crux of the matter is, what we're dealing with here is I was trying to ascertain whether she had any potential for functional outcome based on her neurological status. So I was assessing her ability to be responsive, her ability to have any brainstem function and response.

Q. But how do you do that? Are you looking at eyes, are you, are you checking ears? What are you -- if I were, if I were Mr. Hailu, I would say, "What do you

mean? What are you looking at?"

A. Correct. So --

Q. "Why can't I see it?"

A. So to kind of go into the world of me and vascular neurology, when I go into a case of this magnitude, the initial status is what's the severity, is there something I can do to stop this or reverse this. And if I'm not able to reverse this and it continues to deteriorate, at what point does, does this person cross the threshold of what we classify as irreversible brain damage.

Q. But how do you -- what are you looking at when you make that determination? What physical manifestations? Or what tests are you performing?

A. And the reason I'm --

Q. What responses are you looking for?

A. Yeah, I agree with that. My, my, the reason I needed to clarify that is because I don't bring out brain death criteria on every patient I assess with any, or even catastrophic neurological injuries. I bring out brain death criteria when I'm worried about irreversible brain damage and does a person meet that criteria.

So based on what you're asking, I believed at this point that this was an irreversible brain damage and I was trying to assess whether she met the criteria

for brain death, or irreversible brain damage and death based on neurological criteria. And so I used the American Academy of Neurology guidelines to guide my assessment of people when, when they, when they, when they reach this state. And I did this for Aden.

The criteria are very specific. They assess pupillary response, ocular --

Q. That means what?

A. The pupils responding to light or not light --

Q. Okay. Very good.

A. -- whether the eye movements are moving to head movements, or whether introduction of cold water into the inner ear elicits some form of brainstem response to suggest that there's actually some neurons left within the brainstem that could react. I elicit the, the pain responses and motor responses.

Q. And again, how do you do that?

A. Via stimulation, or pinching, or eliciting pain intentionally to the patient proximally and distally. Meaning, you know, in the head, in the head region, the face, the jaw, the, the proximal limbs, the arms, the legs, the fingers, the toes.

Q. Okay. Very good. So you started, the terminology that you used was neurological criteria established by the American Academy of Neurologists,

right?

A. Neurology, correct.

Q. Neurology. All right. And what is the American Academy of Neurology?

A. It's the standard neurology organization that sets standards for neurological practice.

Q. All right. And you've been practicing in Nevada for how many years?

A. I've had a license -- you're going to elicit some information I'm not --

Q. Just generally.

A. Ten years --

Q. Okay.

A. -- I've had a license.

Q. So you're familiar with the standards of medical practice of your profession here in the state of Nevada.

A. Correct.

Q. And are these criteria that you just described from the American Academy of Neurology, are they accepted medical standards in the state of Nevada?

A. Yes.

Q. Okay. In fact, are they the standard medical standards that are, that are applied by neurologists in Nevada?

A. So in my, in my practice, going back to my

medical school in Washington, to my training in Massachusetts, and my license here and practicing in other states where I'm also licensed, this has been the practice, standard of practice for determination of brain death.

Q. Okay. So you described that you were, you were making a determination, some sort of determination based upon the application of the criteria that are established by the American Academy of, of Neurologists --

A. Correct.

Q. -- right? Okay. And you described some of them. Have we gone through all of them, or are there more?

A. No, there's more. That's the clinical examination.

Q. Okay.

A. But there's several others.

Q. And did we perform those? Or did you perform those?

A. We performed the clinical exam and we performed the apnea exam.

Q. What's the clinical exam? Let's go in order.

A. Well, I gave you the description of the clinical exam.

Q. Okay. All right. All right.

A. Then in terms of the criteria, there is coma and unresponsiveness, then there's whether there's brainstem activity. And then the criteria, option C, is the apnea test.

Q. Okay.

A. Which we've heard in this testimony. The, in absence of the apnea test, because there are criteria where you actually would not perform the apnea test, there's other potential subsections of that that you can perform to try to elicit some form of information that's consistent with your clinical exam, which is the actual measure with which you measure brain death.

Q. And was it performed, the apnea test?

A. Based on the information provided me, ad hoc, yes. The, I -- my last examination on Aden was April 28th. So I was made aware of the apnea test after the fact.

MR. PETERSON: Okay. What I'd like to do, Your Honor, I have about, just three exhibits that I'd like to mark.

THE COURT: All right. Go right ahead. I'll take this time, you were going to talk to me about exhibits.

(An off the record discussion was held at this time.)

MR. O'MARA: Are these excerpts from the

medical records? Is that what these are?

MR. PETERSON: Yes.

MR. O'MARA: Okay. Thank you.

THE COURT: If anyone would like to remove their jackets, they may do so. It's getting hotter and hotter in this courtroom.

MR. O'MARA: Thank you, Your Honor.

THE COURT: You're welcome.

BY MR. PETERSON:

Q. Let's show -- Doctor, what I've handed you is what have been marked as Exhibits 4, 5 and 6. Take a look at Exhibit 4 first. Have you ever seen it before?

A. I do not believe so. It's dated May 30th. My last examination date, I believe is --

Q. Look at the second page. It might help.

A. Second page of Exhibit 4. Okay.

Q. There's some data in the back. This comes from the records -- do you recognize these as coming from the records at Saint Mary's?

A. Yeah. This is consistent with a medical record from Saint Mary's, yes.

Q. All right. And what I want to do is turn, have you turn to the second page. And you mentioned to the Court the, the apnea test.

A. Correct.

Q. Is this the record of -- or I should say "a" record, not "the" record -- a record of the apnea test?

A. It appears so, yes.

Q. Okay. And it's got a bunch of numbers, which may or may not be relevant. As a matter of fact, I really don't want to go through the numbers. They probably don't mean much. What is the conclusion that you draw, or that, that a neurologist draws from this data?

A. This is consistent with the criteria that we use for establishing --

MR. O'MARA: Can you speak up a little louder? I'm sorry.

THE WITNESS: Sorry. This is consistent with the criteria we use to establish brain death.

BY MR. PETERSON:

Q. Okay. The last sentence on this page two, on administration of the test:

This test result confirms brain death unequivocally.

Do you see that?

A. Yes.

Q. Do you agree with that?

A. I agree with the culmination of the data that was provided, and this being the third piece of that puzzle, yes. In terms of it being in isolation, I, I go by the

American Academy of Neurology guidelines, which includes those three criteria.

Q. This is just one of them.

A. This is one of those.

Q. All right. Please turn to Exhibit 5. Turn to the second page. Do you see your name there?

A. I do.

Q. Is this your record?

A. I haven't had a chance to review this --

Q. Okay. Go ahead.

A. -- but it would appear so.

Yeah, this matches my records that I've reviewed myself, yes.

Q. Okay. And please turn to your entry on April 16th.

A. Yes.

Q. You write:

Patient with neuro clinical exam consistent with brain death.

Do you see that?

A. Yes.

Q. Was that your opinion at that time?

A. Yes.

Q. And again, based upon the parameters established by the American Academy?

A. Correct.
Q. Please turn to the next exhibit. Turn to the last page. Do you recognize this, first of all, as a record out of Saint Mary's Regional Medical Center?
A. It looks consistent, yes.
Q. Second page. Are you familiar with Myron Gomez?
A. No.
Q. Say it again?
A. No.
Q. Don't know him?
A. No.
Q. Did you know that Dr. Gomez performed an apnea test?
A. No.
Q. Okay. What do you make -- let me ask you generally now. With respect to the application of the parameters and the criteria established by the American Academy, you applied those?
A. Yes, I did.
Q. And after applying them, you came to a certain conclusion or opinion about Aden Hailu?
A. Yes.
Q. What was it?
A. Based on the evidence that, and my expert opinion, and my experience, I felt that, based on what I

am, I was seeing, that she had zero percent chance of any form of functional neurological outcome. I'd like to qualify, if I may.

Q. Yeah.

A. I mean, there's a lot of personal statements being made by all our, all our witnesses, and I feel like death is about as personal as you get. And so from a statement of, from the standpoint of my perspective, I take this very personally. I have a daughter who has brain damage. I take that very seriously. And I take every case from a personal perspective, honestly. I apologize.

When I saw your daughter, I take that into account, that if there's any chance of her having any sort of functional neurological outcome, I would do it. I would fight Heaven and Earth, and I have in many cases. But when I see a case that I have no data to present any sort of functional outcome, based on evidence that I have provided -- I would do it. If there's any published case that I could find, any case in my experience that I could find that a person with this criteria would have any form of functional outcome, I would say so. I would not be so definitive. I do not know everything. I'm not God.

But based on the criteria presented to me and the

experience I have and the literature that I've been able to review, there, at this point, studies demonstrate zero percent of functional outcome at any point in this person's existence.

Q. Very good, Doctor. But let me, let me -- what do you make of the, what -- first of all, what do you make of the observation that was brought out in the testimony of, of Dr. Byrne that she exhales. I may not have that terminology right, or even the phenomena right. Something about the fact that she's, she's exhaling. The machine puts the air in, but she puts it out. What do you make of that?

A. It's --

Q. Or what about it --

A. It's tough to generalize on a particular topic. We're going to be very specific about her case. A person can exhale when, just based on body habitus and restrictive of connective tissue and muscles. You can exhale when you deliver something that inflates a space. And so when you put, if we're talking about Aden specifically, if you put air into her lungs, she could exhale just from the fact of there's air in the lungs and there's restrictive tissue. Is that --

Q. Yeah.

A. -- what you're trying to get at?

Q. That was an indication that he brought out during the direct testimony, and I wanted you to address it, and I think you have. By the way, is that any aspect or any part of, of the, of the, of the parameters or criteria established by the American Academy, which are applied standard practice in Nevada?

A. I think whether there's visual perception of exhalation is not the criteria. Where a person can breathe or not on their own is a criteria.

Q. All right. And she cannot.

A. Correct.

Q. Because of the apnea test?

A. Correct.

Q. And not because of it, that's the proof of it.

A. Correct.

Q. What about, what about the, what about the observation, Doctor, with respect to -- I may not have this right either -- but the THS, the thyroid stimulating hormone, or something like that?

A. Thyroid stimulating hormone, yes.

Q. You know what I'm talking about?

A. Yes.

Q. The manufacturer, being manufactured, what do you make of that?

A. Several, several components to your question.

One component of your question is that the criteria for brain death and zero percent of functional outcome, which is actually what we're trying to measure with these criteria, does not preclude that, the possibility of having alive brain cells. What it does is it states that you have a zero percent chance of functional outcome.

So the presence or absence of thyroid stimulating hormone does not necessarily mean that there may be or may not be cells that are actually functioning or secreting. What it does mean is there's zero percent chance of neurological functional outcome based on the criteria.

TSH measurements, being in themselves, are not a measurement. Severe electrolyte or endocrine disturbances are part of the criteria for the AAN, but based on my opinion and experience, the imaging did not demonstrate to me a finding consistent with something that would be consistent with hypothyroidism or euthyrthyroid sickness or myxedema coma. This is something consistent with catastrophic, irreversible hypoxic brain damage.

Q. One thing we did not talk about, but I would like to talk about, is the Doppler test. Do you know what that is?

A. Yes.

Q. What is it?

A. Transcranial Doppler is a method of non-invasively measuring blood flow in the brain.

Q. Was that test performed?

A. Yes.

Q. Is it a, is it part of the criteria of the American Academy?

A. It is one of the subsection criterias that we're allowed to use to, to --

Q. What was the, what was the outcome, or the result of that test?

A. The outcome was consistent with what we classify as cerebral circulatory arrest. What that means is, is brain, brain blood flow absence in the, in the major arteries to the brain that supplies blood flow to the cortex, the subcortex and the brainstem. All of that which creates functional neurological outcome.

Q. And so there is no blood flow to the brain?

A. I cannot say there is no blood flow to the brain. There is a gold standard that we, that we can institute, which we did not, but this is a fairly accurate test for demonstrating lack of blood flow consistent with survivability.

Q. All right.

A. And she met those criteria.

Q. Okay. Doctor, testimony in court has to be to a reasonable degree of scientific or medical certainty. I don't know if you've ever testified before, but that's the requirement. You're familiar with the, obviously, the criteria established by the American Academy for the determination of death.

A. Yes.

Q. You've applied the criteria?

A. Yes.

Q. And based upon your application of the criteria, the results from all the tests that you've employed, do you have, do you have an opinion, based upon, or a reasonable degree of medical certainty that, that Aden Hailu is, based on, based on the legal definition, dead? Deceased.

A. Based on my application of AN guidelines, my experience, my training, she has zero percent chance of functional neurological outcome, and thereby meets the criteria that I documented in my notes of brain death.

Q. All right.

MR. PETERSON: That's all I have, Your Honor. Thank you.

THE COURT: Doctor, before Mr. O'Mara questions you, you said you had three primary areas of

review. I understood one to be the clinical test, one to be the apnea test. Is the third, perhaps, imaging?

THE WITNESS: No. Two out of three were clinical exams. So it's the coma unresponsiveness --

MR. O'MARA: You have to speak up. I'm sorry.

THE WITNESS: It was --

MR. O'MARA: I know you're closer to the judge --

THE WITNESS: Sorry.

MR. O'MARA: -- but I can't hear you.

THE WITNESS: It was, it was three criteria. Two of them are actually clinical.

THE COURT: Okay.

THE WITNESS: One of them the apnea test.

THE COURT: Okay.

THE WITNESS: One is, is unresponsiveness, or coma, and the other is brainstem activity.

THE COURT: I understand. Thank you. All right. Mr. O'Mara?

MR. O'MARA: Thank you, Your Honor. I just have a couple questions.

CROSS EXAMINATION

BY MR. O'MARA:

Q. Am I correct that you have ten years of experience out of medical school?

A. Medical school ended in 1998.

Q. 1998?

A. Correct.

Q. And then you went from there to your specialty in neurology?

A. I did my internship at Washoe Medical Center here in Reno, and then I went on to Boston, at Tufts University at New England Medical Center, to do my neurological training.

Q. And when did you finish your neurological training?

A. 2002.

Q. '02?

A. 2002. And then my stroke fellowship ended in 2003.

Q. The fellowship ended in 2003?

A. Correct.

Q. And is that when you came back to Washoe Medical Center?

A. Seattle. I went to Seattle at that point.

Q. And when you went to Seattle, did you go into

private practice or did you work for a hospital?

A. No. I was employed by a hospital at that time.

Q. And which hospital?

A. Valley Medical Center.

Q. And how long were you with them?

A. I was privileged with them for several years. I was employed by them until 2006.

Q. And in 2006 you went into private practice?

A. I went into private practice, but also in association and affiliation with other hospitals.

Q. In 2006?

A. Correct.

Q. Okay. And then, as I understand it, in 2014 is when you came back down here to practice at Washoe Med?

A. I, I had simultaneous practices. I believe I started at Northern Nevada Medical Center, opening their stroke center and providing neurological services, inpatient and outpatient, since 2009. And in addition to my private practice, in addition to directing Auburn Medical Center in Auburn, Washington, as their stroke director. I did not come to Saint Mary's Medical Center on site until 2014, but I've been established as a resident physician running their telemedicine services since 2013.

Q. And did you become certified -- or what do they

call it? -- licensed in Nevada in 2013?

A. I became licensed in Nevada when I started my practice at Northern Nevada Medical Center. I would have to pull out my CV to give you the exact dates of that.

Q. Okay. Now, do I understand correctly that you were employed by Saint Mary's Hospital now?

A. I'm employed by Saint Mary's Medical Group, which is an affiliation of Saint Mary's Medical Center and Prime Health.

Q. But the medical group is separate from the hospital?

A. I would have to ask some lawyer to, to help me with the differentiation and the law of hiring and not hiring physicians in the state of Nevada.

Q. Okay. So it's blurred.

A. I will leave that to higher entities to, to discuss.

Q. Now, as I understood, your first assessment was that she was not brain dead.

A. Correct.

Q. What functions did she have at that time?

A. May I refer to my --

Q. Absolutely.

A. -- notes? So my initial assessment, from an

examination perspective, is that she had an unresponsive right pupil, but the preserved neurological function that I did find was her left pupil was minimally responsive, she was chewing on the ventilator tube, she had some what's called internal rotation of her arm with, with stimulation, meaning there was some movement to her arm with stimulation at that time. And that is all that I saw with regards to neurological function.

Q. Okay. And the next time you see her is on May 30th?

A. April 14th.

Q. April 14th?

A. Correct.

Q. When was the first one, was that April 12th?

A. It looks like April 13th. I misspoke, because it's not dated here. So I'm assuming that I saw her on consecutive days. My first dated note is 4/14/2015. My initial assessment is not dated, but I assume it was the previous day. I wouldn't go --

Q. Okay.

A. -- two days without seeing a patient in critical condition.

Q. April 13th. And then on April 14th, what did you -- did you see that all four of those things that you just said were gone?

A. Correct.

Q. Now, am I correct in assuming that when you say "guidelines," you're referring to the clinical guidelines that you expressed, like pupils, eyes, touching, feeling, all that sort of thing?

A. Correct. At this point I'm engaging the American Academy of Neurology guidelines --

Q. Okay.

A. -- from beginning to end.

Q. Do you do any testing of, of her circulation?

A. Please clarify.

Q. Pardon me?

A. Please clarify. There's much to do with circulation. Are you meaning blood pressure? Are you meaning transcranial Dopplers?

Q. Yes. Any of that.

A. I always assess blood pressures on patients. What else would you like to know.

Q. You don't -- let me rephrase that, because I'm not sure I heard.

You did not test her circulation by way of blood pressure?

A. If you're saying that if I'm testing her vascular system, or circulatory system based on blood pressure, yes, I did.

Q. Okay. What other tests did you do? Actual objective tests, not subjective tests.

A. Please clarify.

Q. Your, your clinical were subjective, because it's touching, feeling, that type of thing and what you observed.

A. Well, just to clarify --

Q. I'm asking you for what objective tests you did. For an example --

A. Well --

Q. -- in order to take a blood test you have to, or a blood pressure, you have to put a cuff on her and find out if it's circulating.

A. Well, just to clarify, there's, the clinical exam involves both objective and subjective --

Q. All right.

A. -- testing. Subjective testing is what you would tell me is going on with your own body. Objective testing is what I would do to you and elicit a response. So in fact I did do objective testing, if that's what you're --

Q. All right.

A. -- referring to.

Q. All right. Misinterpretation on my part. Sorry.

You heard Dr. Byrne's testimony, did you not?

A. Yes, I did.

Q. Is there any reason to do the thyroid hormone treatment?

A. In my medical opinion, I do not believe giving her thyroid will reverse her neurological damage.

Q. Okay. When you say, when you say "functional," what do you mean by "functional"? Are you talking about the fact that after she heals she'll be able to get up and run and walk and do all the kinds of things that we do?

A. Such that we don't end up with hours and long lines of semantics, I believe, at best, based on the evidence we have here, hypothalamic function is not functional neurological outcome. I don't know if that helps clarify.

Q. Well, not for me, but I'm sure for the Court it did. But my question is more about the results that you indicated. In view of her condition, you're saying that she can't function. Is that correct?

A. What do you mean by "function"? Please specify.

Q. Well, that's what -- I'm trying to find out what you said. You said "functionality," you used it three or four times, and I'm trying to say: What does it mean?

A. I think, I was trying to clarify that, is that if

we're talking about neurological function as being hypothalamic function, at best that's what she'll accomplish. So if we're talking about what is functional neurologic outcome, I think anything less, either that or less --

Q. Okay.

A. -- would be, would be neurological outcome. Anything more than that is not achievable.

Q. When you did her test, was the hypothalamus working?

A. I don't know.

Q. So that's not something you would test?

A. That's not something part of the guidelines, no.

Q. Okay.

A. We do test for endocrine electrolyte disorders, which involves hypothalamic function, yes. So, so indirectly we can assess hypothalamic function based on the response.

Q. But it wasn't done in Aden's case.

A. I'm not sure what you mean. What testing are you referring to?

Q. Testing the hypothalamus. See if it was functioning.

A. I don't think there's any direct measure of hypothalamic function. We can have indirect measures

for hormonal response --

Q. Right.

A. -- and electrolyte response.

Q. Did you check any of those?

A. Yes.

Q. And were they all non-functional?

A. I'm not sure what you mean by "non-functional."

Q. Were they working?

A. I don't know how to clarify "working" or "not working." I don't have that data in front of me to tell you what those endocrine functions were. But, but --

Q. Well, do your, do you have --

A. Let's clarify this. Did she have a severe electrolyte or endocrine dysfunction at the time of my assessment and, and criteria for declaring brain death? No, she did not have severe electrolyte or neuroendocrine dysfunction at the time.

Q. Okay. So she was still developing thyroid.

A. I would have to look at all the medical --

Q. Or whatever that --

A. -- records for the --

Q. -- that, whatever the thyroid --

A. -- levels --

Q. -- does. The TH --

A. I would have to look at the times and dates of

of all these examinations. I recall, in terms of date that the TSH was measured, I heard that there was some TSH measurements at that point. I would have to refer to some medical records to, to assess that.

Q. It appears, at least --

A. Do you have, do you have reference to the laboratory values and the dates --

Q. Yeah.

A. -- that I could refer to?

Q. On 4/3 it says the TSH, six five TSH, six five, six five.

THE COURT: What are you reading from, Mr. O'Mara?

MR. O'MARA: I'm just reading from my notes, Your Honor --

THE COURT: Oh, okay.

MR. O'MARA: -- as to what we found in the medical records.

THE WITNESS: Is there something you can provide me so I could comment on your question?

BY MR. O'MARA:

Q. Pardon?

A. Is there something you could provide me so I could actually comment on your question?

Q. Well, I don't have the medical records here. Do

you have them?

A. No. I do not have medical records for labs for those dates, no, I do not.

Q. Right. And do you have -- for example, in 4/3, you were not present, because you didn't get involved until 4/13.

A. Correct. But I did review those records, yes.

Q. Okay. Did you know that Aden's father specifically instructed the hospital not to do an apnea test?

A. I was not aware of that, no.

Q. Had an apnea test already been done before you got there?

A. I was not aware of one at the time of my assessment, or by the last examination date.

Q. Okay. Did you yourself order the apnea test?

A. I recommended, but did not order.

Q. I'm sorry?

A. I recommended, but did not order.

Q. Okay. You recommended it to whom?

A. I recommended it to the primary team who was in charge, the critical care team.

Q. So on 4/12 you basically found that the left pupil was blown? Or was it --

A. It was minimally responsive.

Q. Okay.

A. But if you want to read specifically:

Left pupil, five to six millimeters, not responsive -- excuse me. That was the 12th.

Q. Loss of the brainstem reflexes? How you do you determine that?

A. So -- how do I determine which one? Repeat your question. I'm trying to read my note.

Q. I'm sorry. I didn't mean to interrupt. I believe your notes, or the medical records say you indicated there was a loss of brainstem reflexes.

A. Which, which note are you referring to?

Q. On 4/12.

A. 4/13?

Q. Well, it indicates 4/12. On 4/13 there was an indication that she was chewing on the tube.

A. Correct.

Q. Is that something that's not directed? Is that just something that is spontaneous?

A. Yeah, I said "chews spons," so that's an abbreviation for "spontaneous," on tube. So that suggests neurological function at that point.

Q. It is a neurological function?

A. It is a neurological function, as part of the testing procedure.

Q. All right. Now, that was also true on 4/15. Did you see her on 4/15?

A. Yes, I did.

Q. And she was still chewing on the tube.

A. Was that a question or a statement?

Q. No, it was a question. Is that correct?

A. No, she was not.

Q. Did she have a new fever?

A. I don't have that in my records, I can't comment. But based on the assessment that I provided --

Q. Did you --

A. -- it's normothermic.

Q. I'm sorry?

A. So I was providing AN guidelines, which entails normothermia, meaning within the regular guidelines. So I'm making the assumption, based on my criteria, that I assessed that she was normothermic during the time of the examination.

Q. Okay. Were you involved in the discussion regarding organ donor protocol?

A. No.

Q. Do you know anything about organ donor protocol?

A. I'm still learning.

Q. Pardon me?

A. I'm still learning. I do not know everything

there is about organ donation.

Q. To your knowledge, do they, prior to taking the organs, do they give them thyroid treatment?

A. I am unaware of that. That's something I learned today.

Q. Okay. If she's moving her toe, is that an indication that she still has neurologic function?

A. What do you mean, "move her toe"?

Q. Move it.

A. In what sense?

Q. I guess move it back and forth.

A. On her own?

Q. I don't know. How would you --

A. That's why I'm asking.

Q. Well, I'm not talking about somebody moving it for her.

A. So no physical, no physical --

Q. If her toe moves, isn't it --

A. -- touching whatsoever? No stimulus to the body whatsoever?

Q. Yes. If --

A. Including ventilatory support.

Q. I'm sorry.

A. Well, I'm going to be very clear. When you're -- your question, I think I understand where you're trying

to lead with this question, but I want to make sure we're answering an accurate question.

Q. And I have no problem with that.

A. So let me, let me clarify --

Q. What I'm trying to say is --

A. -- so maybe I can, I can help you with your question.

Q. Right.

A. Is that if someone's moving their, their extremities completely on their own without any external stimulus, any whatsoever, we've got to be very clear on this, I can see that as volitional movement and neurological function. However, there can be spinal reflexes based on atmospheric changes, respiratory stimulea, the bed moving. The sheet moving even a millimeter can induce a spinal reflex that can actually move the toe --

Q. Okay. But what --

A. -- involuntarily, through a reflex.

Q. If she, if she moved her toe -- okay? -- even on a ventilator, would that indicate that she was controlling it herself?

A. No.

Q. Okay. So that would not be considered in your clinical evaluation?

A. That would be considered in my clinical evaluation, because if it was stimulated by an external stimulus and it caused movement, that would not be considered neurological function, that would be considered spinal reflex.

Q. Okay. Is it true that the only records you have are your own records, you don't have the medical records from the hospital?

A. Correct. I only have access to my, my own records currently.

Q. So you don't know when they did the various apnea tests.

A. No. I have not done, I have not done a medical review since last seeing her.

MR. O'MARA: That's all the questions I have, Your Honor.

THE COURT: Any follow-up, Mr. Peterson?

MR. PETERSON: No. No, thank you, Your Honor.

THE COURT: Will you remain? Will you remain in the courtroom?

THE WITNESS: Yes.

THE COURT: All right. Thank you. You're free --

THE WITNESS: Thank you.

THE COURT: -- to step down. Anything?

MR. O'MARA: Can I have just a moment?

THE COURT: Yeah. Mr. Peterson, will you get the exhibits? Which exhibits?

THE CLERK: 4, 5, and 6.

THE COURT: 4, 5, and 6.

MR. PETERSON: Are we concluding, Your Honor?

THE COURT: No, we are not concluding. We are not concluding.

MR. PETERSON: Okay. Because I, I was going to move my exhibits in, but I have one more witness I wanted to call very quickly.

THE COURT: Okay. We'll take a five-minute break.

(A short recess was taken at this time.)

THE COURT: It's come to my attention that when Dr. Byrne was on the stand, when he handed back the exhibits, he handed back two documents. One was the physician's certificate that the Court ensured that each of you had, and one was another document. Counsel, I'd be inclined to give these back to Dr. Byrne, unless you need to look at them to know what he was, in his possession at the time he was answering the questions. Would you like to look at them, Mr. Peterson?

MR. PETERSON: Yes, Your Honor.
THE COURT: Mr. O'Mara?
MR. PETERSON: This was --
THE COURT: We handed that out, correct.
MR. PETERSON: Yeah. Oh, this is a chronology.
MR. O'MARA: I can represent to the Court that that's his --
MR. PETERSON: Notes.
MR. O'MARA: -- review of the medical records.
THE COURT: Sure.
MR. O'MARA: He never used it.
THE COURT: I didn't notice him using it either, I just have to reveal it.
MR. PETERSON: Thank you, Your Honor.
THE COURT: All right. You're welcome. So we'll return those to Dr. Byrne.
Anything further, Mr. O'Mara? Excuse me. Anything further, Mr. Peterson? Excuse me.
MR. O'MARA: This is Mr. Peterson's case.
THE COURT: Anything further?
MR. PETERSON: Yes. I have one more witness, Your Honor. It will be very brief.
THE COURT: Go right ahead.

MR. PETERSON: And that would be Helen Lidholm.

THE COURT: Okay. Deputy, I am inclined to open the doors. It is suffocatingly hot in here.

THE DEPUTY: (Inaudible).

THE COURT: Thank you.

HELEN LIDHOLM,
having been duly sworn,
was examined and testified as follows:

THE COURT: Okay. You've heard me --

DIRECT EXAMINATION

BY MR. PETERSON:

Q. Ms. Lidholm, would you please --

THE COURT: -- tell people all day, this is the microphone. There's water there. I hope there's some left for you. If there's not, let me know. There's tissues and cups.

THE WITNESS: Thank you, Your Honor.

THE COURT: You're welcome. Mr. Peterson?

MR. PETERSON: Thank you, Your Honor.

BY MR. PETERSON:

Q. Tell the Court who you are, Ms. Lidholm, and what

you do.

A. My name is Helen Lidholm, and I am the chief executive officer of Saint Mary's Regional Medical Center and Saint Mary's Medical Group.

THE COURT: Could you spell your last name, please?

THE WITNESS: Yes, Your Honor. L-i-d-h-o-l-m.

BY MR. PETERSON:

Q. How long have you been the chief medical -- or the chief executive officer? Excuse me.

A. I've been the chief executive officer for three years.

Q. Okay. And I don't want to go deeply into your background, but could you just briefly tell the Court, what is your professional background?

A. I'm a registered nurse by professional background, and I have a bachelor's degree in nursing and I have a, an MBA. I was practicing nursing up until around 1990, and since then have been in administrative functions.

Q. Okay. And you were, you were at Saint Mary's prior to the time that it was acquired by Prime Healthcare?

A. I was.

Q. And that was, the previous owner was Dignity Health, I believe?

A. CHW, and then it became Dignity Health, yes.

Q. All right. And you were one of the chief administrative officers for the hospital at that time?

A. Chief operating officer.

Q. Chief operating. How long have you actually been at Saint Mary's?

A. I've been at Saint Mary's a little -- I have to think about that now. Eight years and a few months.

Q. Okay.

A. Since April of 2007.

Q. Okay. And just very briefly, I know you're the chief executive officer, but would you tell the Court just generally what, what your duties and responsibilities are as the chief executive officer?

A. I am ultimately responsible for the, everything that goes on at Saint Mary's Regional Medical Center and Saint Mary's Medical Group.

Q. All right. Now, you're --

A. I'm not in clinical -- I'm sorry. I'm not in clinical practice anymore.

Q. Right. You're administration now.

A. Yes.

Q. Okay. And as the chief executive -- you're here

in court today basically because this is an important business for the hospital, I take it.

A. This is very important for the hospital. And I would like to say to Mr. Gebreyes.

MR. GEBREYES: Gebreyes.

THE WITNESS: Sorry. Gebreyes. We're so very sorry about the situation with your daughter. We also take this very personal and feel your grief.

I am here because it is really important for Saint Mary's, and it's really important for me personally, that we do the right thing by all of our patients.

BY MR. PETERSON:

Q. Okay. And on that, on that point, we listened to testimony today from Mr. Gebreyes, I believe, who expressed an interest, or desire, I believe I have this right, basically to have his daughter discharged from Saint Mary's and certain procedures performed to maintain her, and then be transferred back to his home. Is that -- I may have that right, but I think that's what he said. Do you recall any of that?

A. I do recall that.

Q. Is the hospital opposed to that, Ms. Lidholm?

A. We are not opposed to that at all. We are very much in favor of that.

Q. All right. And can you tell me, logistically, how would that come about? How could the hospital make that happen?

A. The hospital could make that happen if the family arranges for a transfer of the patient, the transport of the patient, and if the family arranges for the appropriate equipment to maintain Ms. Hailu in her current condition, that that be delivered to the home.

Q. Okay. Now, you've not only read the, or listened to the testimony today, but you've looked at some of the papers that were filed in this case?

A. I have.

Q. And would that include the declaration of, of Dr. Byrne?

A. Yes.

Q. Okay. And you're familiar with what he, what he suggested, what he wants?

A. I am.

Q. Okay.

MR. PETERSON: I wonder, do we have another -- is this marked in evidence or not? I don't think. Do we have another copy or not?

MS. PRUPAS: No.

MR. PETERSON: Let me --

THE WITNESS: There's --

MR. PETERSON: If I could just approach the witness, Your Honor. I don't think I need to mark it.

THE COURT: Mr. O'Mara first.

MR. PETERSON: I beg your pardon?

THE COURT: Mr. O'Mara first.

MR. PETERSON: Yeah. This is the declaration of --

MR. O'MARA: Dr. Byrne?

MR. PETERSON: -- Dr. Byrne (inaudible).

MR. O'MARA: Yes.

MR. PETERSON: You have that?

MR. O'MARA: Right. Isn't that part of the --

MR. PETERSON: Court record.

MR. O'MARA: -- court record, Your Honor?

THE COURT: Which exhibit?

MR. PETERSON: It's attached as Exhibit 1 to the petition.

THE COURT: Are you asking that it be incorporated into the trial record --

MR. PETERSON: Yes, Your Honor.

THE COURT: -- as an exhibit? And you're both stipulating to it?

MR. O'MARA: Yes.

MR. PETERSON: I am, Your Honor.

THE COURT: All right. We'll mark it next in line.

THE CLERK: It's going to be Exhibit 7.

THE COURT: Exhibit 7, Mr. Peterson.

MR. PETERSON: Thank you. I only have the one, Your Honor.

THE COURT: That's all right.

MR. PETERSON: It's part of the court record.

THE COURT: That's all right. I can hand it back when you're finished with it.

MR. PETERSON: Okay.

BY MR. PETERSON:

Q. I'll show you, Ms. Lidholm, Exhibit 7. And from my own memory I'm going to find the right paragraph. Direct your attention to paragraph 26.

A. Yes?

Q. Okay. You've seen this before, have you not?

A. I have.

Q. Okay. And just, just very briefly, if you take a look at the, the procedures called for under paragraph 26 in this declaration by Dr. Byrne, and you'll see, it goes through the alphabet. It's one through Z, so I guess that's --

MR. PETERSON: Is that 26?

MS. PRUPAS: 26.

BY MR. PETERSON:

Q. It's 26. Plus -- it's about 33 procedures. Do you see that?

A. Yes, I do.

Q. Okay. Do you recognize these, some of these procedures?

A. I do, many of them, not all.

Q. Okay. Can you generally describe or categorize them in any way?

A. From what I can tell, there are requests for both procedures, blood work, and supplements, as well as other items, like an air mattress and, and things like that. There are also, there's orders for medications, and some of them I'm not familiar with.

Q. Right.

A. Again, I'm not practicing anymore.

Q. Now, practically speaking, logistically, who does these procedures?

A. Who performs them --

Q. Yeah.

A. -- or who orders them?

Q. Well, both.

A. Okay. For a hospital, the only person who can order any of this that is described under 26 is a -- I'm

sorry, 25 -- is a physician who is licensed in the state of Nevada and that is credentialed to practice at Saint Mary's.

Q. Right.

A. He or she can write the order for these. In terms of carrying out the orders, there's a wide array. When it involves pharmacy, we have our pharmacists issue the medication. If it is a request for lab tests, that means that it goes through our laboratory department, and a phlebotomist, or someone of that sort, draws the blood. And in the case of specific equipment, you know, an air mattress would be brought to the patient. But it's all based on physician, documented physician orders.

Q. Okay. Now, with respect to the protocols at the hospital, and also with respect to the regulations that apply to hospitals, are you familiar with, like, Medicare and Medicaid regulations that apply to hospitals?

A. Yes, I am.

Q. Can hospitals order doctors to order things? Can they direct doctors to perform certain procedures?

A. No, we cannot.

Q. And can, can the, can -- if the doctor wants to order something, the hospital then carries it out?

A. If the doctor wants to order something and it is within established medical practice and abides by our medical staff rules and regs and bylaws, as well as hospital policy, then, yes, we can carry it out.

Q. Okay. But for instance, this list of things that Dr. Byrne has identified here, the hospital is without legal authority to order any of these things to be done to Aden.

A. That's correct.

Q. It has to be a physician that orders them.

A. It has to be a physician.

Q. Okay. Now, you've been working, you've been involved in this matter, really, for over a month, a month and a half, at least. Or more, probably; right?

A. Since the beginning of April, yes.

Q. Okay. Now, if -- on behalf of the hospital, has the hospital extended an opportunity to the family to retain whatever neurologist that they want to come in and examine Aden Hailu at any time for any reason?

A. I, I have not personally extended that offer, but I can tell you unequivocally that we would welcome and allow the family to bring in a physician that they were comfortable with to carry out these, or any other orders, as long as the physician is licensed in the state of Nevada and is credentialed at Saint Mary's

Regional Medical Center.

Q. But if they're not credentialed at Saint Mary's, can that happen? Can you make that happen?

A. Yes, we can make that happen. We have provisions in our medical staffs rules and regs and bylaws, as well as within hospital protocols, that if the physician is licensed in the state of Nevada, and our medical staff services can verify that this physician is in good standing, we can allow a physician what is called temporary emergency privileges for the purposes of seeing and treating one patient. Something that usually can take several months can be done in probably less than 24 or 48 hours.

Q. On the credentialing part?

A. On the credentialing part, yes.

Q. All right. Now, with respect to the opportunity to -- you understand, of course, that the debate that's going on here is the, is the application of the Uniform Declaration of Death Act. You understand that.

A. I do.

Q. Okay. And obviously the hospital believes it's applied the criteria -- not the hospital, the doctor also applied the criteria established by the American Academy.

MR. O'MARA: Your Honor, a lot of leading

questions.

THE COURT: A lot of leading questions.

MR. PETERSON: That was, hopefully, just background.

THE COURT: It's preliminary. I understand.

MR. PETERSON: Yeah, just background.

BY MR. PETERSON:

Q. The question really is: The hospital make, has the hospital made available to the family the opportunity to have a physician come in, provided that they're properly credentialed, to conduct whatever tests or examinations that they want in order to make their own determination under the Uniform Act?

A. Yes, we have.

Q. All right. And is the hospital still willing to do that?

A. Absolutely.

Q. And is the hospital willing to pay for that?

A. Yes, we are.

Q. Okay.

MR. PETERSON: No further questions.

THE COURT: Mr. O'Mara?

CROSS EXAMINATION

BY MR. O'MARA:

Q. The only question I would have is that there is now a process that you explained where a physician that they may bring up from, like, Las Vegas to come in, as long as he's licensed and credentialed at some hospital in Nevada, you would accept him to allow to do the procedures that have been recommended?

A. That's correct. If the physician is licensed in the state of Nevada, and our medical staff services, through their processes, can verify that the physician is in good standing, we can provide he or she with emergency privileges fairly rapidly. I don't want to commit to an hour, but it will be quickly, yes.

Q. First of all, if we had a Las Vegas doctor, it's going to take more than an hour just to get him here. So --

A. Some of that can be done --

Q. I assume that that's something that you would be willing to cooperate with Mr. -- I have a terrible time with his name, last name -- Fanuel.

A. Yes, we would be willing to do that.

THE COURT: Has that offer been made before 6:15 on June --

THE WITNESS: Yes.

THE COURT: -- July 2nd?

THE WITNESS: We have made that offer through our legal counsel to current and past --

THE COURT: And you're making --

THE WITNESS: -- counsel.

THE COURT: -- it again tonight? You're making that offer again tonight?

THE WITNESS: I'm making that offer again tonight.

MR. O'MARA: Your Honor, I can represent to the Court that I've never heard of that offer until just now, and I would accept that offer on behalf of my client.

THE COURT: And how would that offer be effectuated? How do you envision that protocol occurring?

THE WITNESS: I'm not quite sure -- oh, how it would occur? If the family is able to find a physician that has not currently been involved in the case that is willing to come in and verify, either verify what has already been determined by the treating physicians or write the orders for the procedures and the medications that was suggested in this exhibit, that we would allow that.

MR. O'MARA: As I hear it, Your Honor, what

she's saying is if I, my client gets a physician that's licensed in the State of Nevada, comes here, sees the client and agrees with the recommendation of Dr. Byrne, that he may perform those items that have been recommended, he or she can perform those items that have been recommended by Dr. Byrne. Is that correct?

THE WITNESS: That's correct.

MR. PETERSON: Are you wondering why we're here, Your Honor?

THE COURT: I certainly am.

MR. O'MARA: We're here because I never heard of it before.

MR. PETERSON: The problem is, the problem has always been, Your Honor, they've had this time to do, get any physician they want, and they know that. That offer was extended, by the way, to Cal Dunlap. That's why he was going to get a physician to come in, one of their choice, basically, to come in and do whatever tests that they wanted to confirm whether she was dead or not dead. And if she was dead -- obviously if there's a doctor that confirms that she is not dead, we're going to -- we're not, we're not going to overrule that.

THE COURT: All right. How much time do we need to get that done?

MR. PETERSON: Well, I think Ms. Lidholm would like to have it done within -- we don't think it will ever happen, but that's why we'd like to put a short time on it. But if they need an opportunity, I'm sure Ms. Lidholm will give them the opportunity.

THE COURT: Well, let's ask --

THE WITNESS: Yes.

THE COURT: -- Mr. Gebreyes.

MR. GEBREYES: Yes.

THE COURT: How much time do you need to identify and provide to the hospital -- first of all, do you want to take advantage of that opportunity?

MR. GEBREYES: I would like to take advantage of that opportunity, because I haven't been given one before.

THE COURT: And how much time, reasonably and efficiently and promptly, do you envision needing to secure a medical provider, as described, and have that person examine your daughter --

MR. O'MARA: Your Honor, may I --

THE COURT: -- and possibly prescribe the medication that's been identified?

MR. GEBREYES: You know, Your Honor, I cannot -- excuse me.

MR. O'MARA: May I make a suggestion, Your

Honor? I'm not sure he's in a situation where he can answer that question. But obviously nothing can be done until Monday.

THE COURT: Can I see counsel in chambers?

(A short recess was taken at this time.)

THE COURT: All right. Counsel, we're back on the record. This brief break has led me to believe that we may have a temporary interim settlement.

MR. O'MARA: I didn't hear a word you said with that truck going by.

THE COURT: Do we have a temporary interim settlement? Not settlement. Agreement?

MR. O'MARA: Yes.

THE COURT: Mr. Peterson?

MR. PETERSON: Yeah, a stipulation of the sort, yeah.

THE COURT: Yeah.

MR. PETERSON: Yes.

THE COURT: Would you like me to say it, or would you like to say it? Or who would like to repeat the stipulation?

MR. PETERSON: Well, I think, I think maybe I'll say it --

THE COURT: Okay.

MR. PETERSON: -- if that's all right, Your

Honor.

THE COURT: Sure.

MR. PETERSON: I think we're, what we discussed in your chambers, and I think came to a consensus, as I've communicated, hopefully accurately, to my client, is that the, the petitioner is going to have 21 days, 21 days in which to obtain the services of a physician, licensed in the state of Nevada, who is in good standing and can be credentialed.

(Cell phone rings.)

MR. O'MARA: Excuse me, Your Honor.

THE COURT: That's all right.

MR. O'MARA: I called her because I was late for work.

THE COURT: It's all right, Mr. O'Mara.

MR. PETERSON: And can be credentialed by Saint Mary's Hospital to come up to the hospital, examine the patient, determine, for the patient, whether that patient is alive or dead, and if alive, to order whatever medications or procedures that licensed physician deems appropriate, to include a complete medical plan, a discharge plan.

That also would include discharging from the hospital and transporting from the hospital to some other location other than Saint Mary's Hospital. And

Saint Mary's Hospital -- and at their own expense, by the way.

THE COURT: Although I did hear an offer of payment from the hospital, so you need to kind of back out of that a little bit in terms of payment of a consulting physician.

MR. PETERSON: Well, what I, what I intended on the, what I mentioned in court here, was the same proposal we had made previously, and that was that they would retain the services of a neurologist, and a neurologist would come in and make a determination of life or death. And, and what I proposed was that we would pay for that procedure. But not, you know, not basically to pay for, because she's clinically dead, not to pay for any of the procedures that the doctor is going to be ordered, or that the doctor himself performs for the patient. You know, that --

MR. O'MARA: Your Honor.

MR. PETERSON: -- that can't be at the hospital's expense.

MR. O'MARA: Your Honor, in that regard, my client received notice from Medicare that they will cover all the medicals all the way up to the end of July.

MR. PETERSON: In any event, Dr. -- excuse

me. In any event, Your Honor, I think what we envisioned here, and the way I've communicated it to my client, and that is -- by the way, they're not, they're not thrilled with the 21 days, because it is expensive to do this 24-hour care for this patient, who we believe is clinically dead.

But what, what we hope and what we intend is at the end of this 20-day period, this patient either will -- we'll come back to this courtroom at that point in time for a final determination by you, or that patient will be out of the hospital.

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

MR. O'MARA: Your Honor, and in our meeting in chambers, you gave us five things that Mr. Fanuel was to accomplish in that 21 days. Actually, it's 19 days.

THE COURT: It's 19 days.

MR. O'MARA: We're going to do it on the 21st, and I think that's where the numerical differences are. If the Court could enumerate those five things that the Court wants my client to accomplish --

THE COURT: Here's what I heard, and here's what I understand. That Saint Mary's Hospital will accommodate a physician who is licensed in the state of Nevada, who will provide privileges, Saint Mary's will provide privileges to practice within the hospital, on

an expedited basis, potential as quickly as a turn-around of 24 to 48 hours. I heard the chief executive officer offer that the hospital would accommodate requests for procedures, blood work, and supplemental medical orders of such a physician, as, as determined appropriate by such physician, and that that physician would be paid for by Saint Mary's. Now, Mr. Peterson has qualified that, and Mr. O'Mara has said we're good, we have Medicare.

But I really don't want to be back in the same situation we're in today with a non-neurological expert advising the Court with respect to what are primarily neurological issues. So you need to look for an appropriate physician to address the needs of your daughter, as articulated by you and through your counselor, and through the physician who's already testified.

Whether or not that physician determines death or not is really not the issue, it's whether or not that physician is going to treat the patient, prescribe the protocol for the patient that the guardian is hoping for, and works with the guardian to accommodate transfer.

Now, with respect to transfer, my impression was the following of the agreement: The guardians will

have a plan of care supported by a medical physician that details the substance of the treatment and care plan for your daughter. That the treatment and care plan needs to be a feasible plan in her best interests. That that care plan will include the transportation, method and manner, the location to where she will be transported, the plan of care for your daughter, once she arrives at the destination. All right? You need to have -- and the method of payment for such care. That needs to be all in the plan of care submitted to the Court, supported by medical evidence.

The Court's view is this is a second opinion, being accommodate by Saint Mary's, requested by the guardian, and approved by the Court within the parameters identified, based on the knowledge that we have today.

It's my impression the parties are stipulating to suspend this hearing to preserve the evidence and to reconvene in 19 days, either to receive a report on the transfer or to address the remaining issues that still are outstanding, including the evidence and relying on the evidence presented today, with any supplementation that either party provides, including the possibility of an existing or new ethics evaluation from the hospital, and including the

possibility of a new physician's evaluation from the person that you hope to receive assistance that you have not yet identified.

For those reasons, the Court will accept the stipulation, if that's what you understand it to be, Mr. O'Mara.

MR. O'MARA: That's what I understand it to be, Your Honor.

THE COURT: Is that what you understand it to be, Mr. Peterson?

MR. O'MARA: Do you understand it?

MR. GEBREYES: Yes. To some extent, yes.

MR. O'MARA: Is that right?

MR. PETERSON: It's my understand, yes, Your Honor.

THE COURT: Okay. Well done. The Court will accept the stipulation.

MR. O'MARA: Your Honor, my client has a question. Hold on.

MR. GEBREYES: Yeah.

(An off the record discussion was held at this time.)

MR. PETERSON: Your Honor, you did raise, it's really not our issue, but we want it to be legal and final, you did raise the issue, I'm not familiar with, about a co-guardian?

THE COURT: Hold on.

MR. O'MARA: There is no question of dead or alive. That's what I understand --

THE COURT: I don't know that that's -- what, what you have represented you want, and what the hospital said they will accommodate --

MR. O'MARA: Right.

THE COURT: -- is if a physician from Nevada comes in and says: I identify this treatment plan as necessary and appropriate. I will assume responsibility for effectuation of the plan. My plan of care will result in an expected beneficial outcome to the patient in the following, of the following nature. Because the Court still has the best interest determination to evaluate in relation to the guardians' decision making.

So we have had a lot of evidence on whether or not there is sufficient medical documentation to make a declaration of death or not. You, you may or may not address that. It's going to be what the plan of care is and where you go from here.

MR. O'MARA: That sounds fine, Your Honor.

THE COURT: And you need to be ready for the possibility that your consultant may end up concurring with Saint Mary's Hospital. Do you realize that?

MR. O'MARA: I do.

THE COURT: And that evidence also needs to be shared with the Court. Do you understand that?

MR. O'MARA: Yes.

THE COURT: Okay. All right. So Mr. Peterson, are we still on board?

MR. PETERSON: We are, Your Honor.

THE COURT: All right. Mr. O'Mara, are we still on board?

The final issue was where is the co-guardian in this case. The Court needs to rely on the decisions of the co-guardians, as well as the decisions of the hospital and the medical evidence. So there's a glaring absence of the co-guardian. If it's difficult for her to appear, she may participate by phone. But it's kind of a void in the record that, that needs to be corrected.

MR. O'MARA: That sounds fine, Your Honor.

THE COURT: All right. You can work together on deciding who's going to prepare that order. You can get a copy of the tape, because the minutes are going to take longer than the time of the next hearing. Okay?

All right. Thank you very much. So sorry for the heat. Thank you for all of you staying here.

THE CLERK: (Inaudible).

THE COURT: Oh, yeah. So July 21st. 1:30, yeah.

THE CLERK: July 21st at 1:30.

THE COURT: And you have the afternoon.

MR. PETERSON: Very good, Your Honor.

THE COURT: Okay? Thank you very much.

MR. O'MARA: I'm sorry. The 21st at --

THE COURT: 1:30.

MR. O'MARA: -- in the afternoon?

THE COURT: At 1:30. At 1:30.

MR. O'MARA: Yes. One more question. The other co-guardian is in Russia attending college.

THE COURT: Is she going to be here?

MR. O'MARA: She won't be here. That's the problem. Can I have her appear by telephone?

THE COURT: Right. So we can have her appear by telephone. Counsel can stipulate to a written statement, you know.

MR. PETERSON: We will.

THE COURT: Okay. We also might be able to have her video conferenced. So plan ahead in terms of what that might include. Because our system is, really works well, unlike our air conditioning.

MR. O'MARA: Thank you, Your Honor.

THE COURT: All right. Thanks very much.

MR. PETERSON: Thank you.

THE COURT: Have a good weekend.

(Hearing concludes.)

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STATE OF NEVADA)
COUNTY OF WASHOE) ss.

I, SUSAN E. BELINGHERI, a certified court reporter and notary public for the County of Washoe, State of Nevada, do hereby certify that on Friday, the 7th day of August, 2015, I transcribed the above proceedings from a CD;

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

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

SUSAN E. BELINGHERI, CCR #655