

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

8 Attorneys for Defendant
9 CHILDREN'S HOSPITAL & RESEARCH
10 CENTER AT OAKLAND

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 LATASHA WINKFIELD, as an
14 Individual, and as Guardian Ad Litem and
15 mother of Jahi McMath,

16 Plaintiff,

17 v.

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

21 Defendants.

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

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

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

I, Heidi R. Flori, M.D., hereby declare as follows:

1. I am a physician licensed in the State of California. I am board certified in pediatrics as well as pediatric critical care medicine. I have been on the medical staff at Children's Hospital & Research Center Oakland ("Children's") since 1998 and Medical Director of the Pediatric Intensive Care unit at Children's since 2009.
2. Jahi McMath was declared dead on December 12, 2013.
3. I have intermittently attended to Jahi McMath's body since her death on December 11-12 and have discussed the management and preservation of the body, including continuation of court-mandated mechanical ventilation, in detail with my colleagues during that time in order to be continuously appraised of the body's condition and events relevant to it.
4. I am informed and believe that Petitioner is seeking to: (i) compel Children's to perform or facilitate the performance of a tracheostomy on and insert or facilitate the insertion of a gastrointestinal tube in Ms. McMath's body; or (ii) secure the body's release to Petitioner to facilitate the body's transfer to an as yet unidentified medical facility for these purposes—all in order to, in essence, "optimize her physical condition" by providing additional nutrition beyond the current IV fluids, etc.
5. Ms. McMath was declared dead on December 12, 2013. While allowing post-mortem bodies to be supported for over three weeks after declaration of death appears to be unprecedented, it is the medical team's complete conviction that nothing can be done to stop the natural progression of

Ms. McMath's post-mortem bodily deterioration which is already underway—or the bodily deterioration of any deceased individual. Consequently, the aggressive medical interventions Petitioner is seeking—or, indeed, any continuing medical interventions, including those mechanical ventilation and other measures currently mandated by this Court—will not stop but only serve to slow post-mortem deterioration.

6. The diagnosis of death by neurological criteria is predicated not only on loss of higher cortical functions (emotions, voluntary movements, vision, etc.) but also on complete cessation of *all* brain functions, including those of the brain stem. The brain stem provides vital regulatory control for critical bodily functions such as maintenance of heart rate, temperature, and respiratory effort, as well as regulation of nerve impulses that adjust the tone of blood vessels and nerves throughout the body. Therefore, the body of Ms. McMath, unlike the bodies of those patients with severe brain injury but with retained brain stem reflexes (including Terry Schiavo and Ariel Sharon), simply cannot regulate these life-sustaining functions over time.

7. The inability of Ms. McMath's body to regulate life-sustaining functions is already being demonstrated in many ways, including as follows:

a. She has not had evidence of bowel functioning (sounds) for weeks. Yesterday (January 2), she passed some stool that was clinically consistent with defecation of the tissues lining the bowel (i.e., her body is sloughing her gut). In living persons, absence of bowel sounds and sloughing of gut materials are both indications that enteral nutrition, which

would occur through the g-tube being proposed, may be deleterious, particularly where, as here, there has been prior cardiopulmonary arrest and regulation of blood flow to the gut has been or continues to be compromised.

b. Although the medical team has done an excellent job of maintaining the body's external appearance (the hair is done, nails manicured, etc.), the tissues beneath the skin (subcutaneous tissues and muscles) are showing gradual signs of deterioration including change in skin "turgor" (in essence, its elasticity) and increase in muscle contraction (due to the loss of nervous system regulation).

c. The body also does not exhibit airway protective reflexes such as cough which are initiated by the brainstem. Although we are applying inhaled therapy twice daily to improve the body's "pulmonary toilet" (its clearance of pulmonary respiratory secretions), its secretions are continuing to change adversely with time. They are now more malodorous, changed in color (sometimes tan, creamy or bloody) and thicker in consistency.

d. Without nervous system control to adjust blood vessel tone with changes in body movement (as would normally need to occur to allow living persons to move from lying to sitting and sitting to standing), the body occasionally exhibits precipitous, although so far temporary, changes in blood pressure and oxygenation levels when staff are moving

the torso up or down or side to side in order to complete daily care routines.

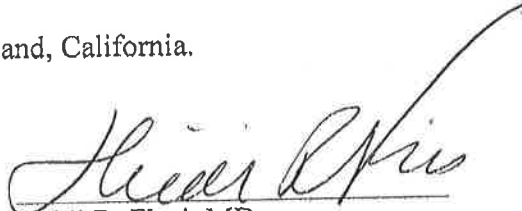
e. The body is unable to regulate temperature. Blankets are needed to maintain a temperature of greater than 35 degrees Celsius (95 degrees Fahrenheit).

f. Finally, the body has had gradually deteriorating blood pressures over the last three weeks, with blood pressures often half of what they were at the time Ms. McMath was first declared deceased. This, again, is a testament to the body's long post-mortem course.

8. The medical team and I believe that additional and more dramatic signs of the body's deterioration will continue to manifest over time regardless of any procedures and regardless of any heroic measures that any facility in the country might attempt. This deterioration became inevitable the moment she died. Mechanical support and other measures taken to maintain an illusion of life where none exists cannot maintain that illusion indefinitely.

9. The additional medical interventions Petitioner proposes are unprecedented. They simply will not bring her back to life nor enable others to do so. Nor can they correct or even improve the above-described manifestations of the post-mortem deterioration of Ms. McMath's body. Indeed, such measures may well be counterproductive, perhaps even resulting in expedited cardiopulmonary cessation.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct. Executed this 3rd day of January, 2014 at Oakland, California.



Heidi R. Flori, MD