

1 Christopher B. Dolan (#165358)
2 **THE DOLAN LAW FIRM**
3 1438 Market Street
4 San Francisco, California 94102
5 Telephone: (415) 421-2800
6 Facsimile: (415) 421-2830

7 Attorneys for Plaintiff

8 **Superior Court State of California Alameda County**
9 **OAKLAND**

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

13 Petitioner

14 v.

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

19 Respondents

Case No.: PR13-707598

Ex Parte Application for a Emergency
Continuation of Temporary
Restraining Order to Enjoin Defendants from
Ending Life Support, Declaration of
Christopher B. Dolan Re Notice and Proposed
Order

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD IN THIS ACTION:

21 YOU ARE HEREBY NOTIFIED that on December 30th, 2013, at as soon thereafter as this
22 matter may be heard in Department 31 of the Alameda County Superior Court, Oakland, CA,
23 Petitioner LATASHA WINKFIELD, will hereby move this Court ex parte for an emergency
24 continuation of the temporary restraining order restraining Defendant CHILDREN'S HOSPITAL &
25 RESEARCH CENTER AT OAKLAND; and DR. DAVID DURAND from ending Life Support for
26 the minor Jahi McMath and request for provision of nutrition and other medical treatment to provide
27 optimize her physical condition and avoid conditions like hypothyroidism, while the Court makes its
28

1 ruling. Plaintiff also seeks an order compelling placement of a tracheostomy tube and gastric
2 feeding tube into Jahi McMath so that she can be provided proper respiratory support and nutrition
3 and so that she can meet the conditions required for transfer to another facility. An observation of
4 Jahi McMath by Dr. Paul Byrne, creates an opinion in his mind that Jahi is not dead, nor “brain
5 Dead, and that with proper nutrition and care she can have meaningful recovery to the degree that
6 she would not meet the “brain death” criteria. Additionally, there has been a recent development
7 where a qualified facility has agreed to accept Jahi McMath, Transportation arrangements have been
8 made and funding secured. The hospital needs to execute transfer paperwork providing information
9 to the air ambulance and receiving facility concerning Jahi’s condition. To execute this transfer
10 there will need be a stay of at least 72 hours given the holiday. Petitioner will move with all due
11 haste to effectuate this transfer sooner.
12

14 Petitioner is in possession of video, shot within the last 24 hours, sent with this declaration,
15 electronically, to the court demonstrating movement by Jahi McMath, while her mother is speaking.
16 Dr. Byrne has observed this and has opined that it represents evidence of brain activity and life in
17 Jahi McMath.
18

19 If this extension is not granted Respondents will remove ventilator support from Jahi
20 McMath and she will stop having cardio pulmonary support and she will expire.
21

22 Therefore this extension is warranted given the exigent circumstances.

23 This Application is supported by the attached declaration of Christopher B. Dolan and that of
24 Dr. Paul Byrne attached hereto.
25

26 Dated: December 30, 2013

THE DOLAN LAW FIRM

27
28
By: _____


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2 **THE DOLAN LAW FIRM**
3 1438 Market Street
4 San Francisco, California 94102
5 Telephone: (415) 421-2800
6 Facsimile: (415) 421-2830

7 Attorneys for Plaintiff

8 **California Superior Court County of Alameda**
9 **UNLIMITED JURISDICTION**

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

13 Plaintiff,

14 v.

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

Case No.:

Declaration of Christopher B. Dolan In Support
of Plaintiff's Ex Parte Application for
Emergency Continuation of Temporary
Restraining Order to Enjoin Defendants from
Ending Life Support

The Hon Evelio Grillo
Department 31.

20 I, CHRISTOPHER B. DOLAN, declare as follows:

21 1. I am counsel of record for the Plaintiff, and a member in good standing with the State of
22 California Bar and The Federal Court for the Northern District of California. I make this
23 declaration in support of Plaintiff's Ex Parte Application For Emergency Extension of
24 Temporary Restraining Order And Order To Show Cause Re: Preliminary Injunction. The
25 facts stated herein are known to me personally and, if called as a witness, I could and would
26 testify competently thereto.

27
28 2. I have provided actual notice of my intent and served this Ex Parte Application and the

1 Compliant on counsel for the Defendants. I presume they will oppose this Ex Parte and will
2 be attending the hearing. Accordingly, proper notice was provided under the Federal Rules of
3 Evidence.

4
5 3. On December 9, 2013, Jahi McMath went in for a routine procedure to have her tonsils
6 removed in hopes that it would assist with her sleep apnea. Jahi is 13 years old, and is in the
7 8th grade. On December 12, 2013 the Defendants declared Jahi brain dead after her tonsil
8 surgery ended with her bleeding profusely, going into cardiac arrest, and needing life-
9 support. Currently, Jahi McMath remains on life-support at Defendant's Hospital.

10
11 4. Plaintiff is actively seeking alternate placement for her child. I myself have tried to assist in
12 that endeavor and have been informed that sub-acute facilities require that a patient have a
13 tracheostomy tube and a gastric tube inserted prior to transfer and admission.

14
15 5. Defendant has refused to follow the directions of Plaintiff to insert such tubes so she can
16 transfer her daughter because they "won't provide medical treatment to a dead person."

17
18 6. Absent an injunction, this 13 year old girl will be taken off life-support immediately by the
19 Defendants. There can be no greater irreparable harm than death.

20
21 7. A balancing of the relative hardships on the parties favors granting the requested temporary
22 restraining order. There is absolutely no damage that the Defendants can claim that would
23 override improperly ending life-support measures on child.

24
25 8. I have informed the Hospital Defendants that the family is actively seeking to re-locate their
26 daughter to an alternate care facility but, given the holidays, and the emotional difficulties
27 accompanying this most critical and catastrophic injury, and the relative naiveté of the
28 Plaintiff over medical issues, the family, despite best efforts, has been unable to locate
alternate arrangements. All facilities which I have spoken to have stated that as a
precondition of transfer they would require that a tracheostomy tube and gastric tube be

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placed into Jahi McMath.

9. I am currently in discussions with healthcare facilities in New York and Phoenix Arizona. I have provided Dr. Fisher's most recent neurological evaluation to these facilities. I can provide, in camera, correspondence with that Phoenix facility. I do not wish to reveal the name of the facility publically as they are concerned about the large media interest and do not want a horde of reporters descending on their facility. This prospect of media attention has already led to two facilities informing me that a factor in their withdraw of their original tentative agreement to accept Jahi was the potential for disruption and invasion of the privacy rights of their current patients and their families. Additionally, I have provided the family with information on how to apply for In Home Support Services IHSS through the state of California.

10. Attached as Exhibit A is a letter from a facility in New York willing to accept Jahi.

11. Attached as Exhibit B are two Declarations filed by Angela Clement attesting that she has located a facility which will accept Jahi McMath documenting that arrangements have been made to transport Jahi to New York if necessary.

12. Attached as Exhibit C is a true and correct copy of an estimate demonstrating that an air ambulance has been arranged to transport Jahi to New York and a letter attesting to the services to be provided in the transport of Jahi. I am aware that sufficient funds exist to pay for the cost of this flight,

13. Additional time is needed to execute on these plans. The Holidays have made the making of arrangements very difficult. The family only had six days to execute on the very difficult series of negotiations and arrangements. This time will result in meeting the hospital's objectives of having Jahi removed from their facility and will meet the family's objectives of keeping Jahi's physical body intact so that recovery may take place.

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14. On behalf of the family, as their designated legal representative, I have requested that measures be taken to allow ventilation support to continue and to support the physical health of Jahi McMath by installing a feeding tube, provide nutrition and place a more permanent measure to allow oxygen to be delivered.

15. I am in possession of video showing Jahi McMath spontaneously moving her head and appendages while her mother is speaking in the room. This is, pursuant to Dr. Byrnes declaration evidence of life. I am going to e-mail this to the court and counsel.

16. I am in the process of filing an writ with the First Appellate District a copy of which is attached hereto.

I declare that the foregoing is true and correct under the penalty of perjury under the laws of the State of California. Executed on December 29 2013, in San Francisco, California.

By:  _____

CHRISTOPHER B. DOLAN
DOLAN LAW FIRM
Attorney for Plaintiff

EXHIBIT A



New Beginnings Community Center
12-B Platinum Court
Medford, NY 11763

"In each loss there is a gain as in every gain there is a loss and with each ending comes a new beginning"

December 29, 2013

Dear Attorney Dolan,

New Beginnings is an outpatient severe traumatic brain injury center. We are currently building and near completion of The Brendan House which will be a long-term private inpatient center that will act as a long term subacute care inpatient center caring for the severely brain injured patients.

We are aware of Jahi McMath's dire situation and we are willing to open our outpatient facility to provide 24 hour care as an inpatient long-term facility for Jahi with the required and appropriate medical staff that she depends upon. When the Brendan House is completed which will be very soon we will be able to transfer her to our Brendan House facility.

We will be providing Jahi McMath 24 hour licensed nursing staff and licensed respiratory therapists. We are also hiring a pediatrician who will accept her as his patient.

If you identify any additional needs that we have not addressed in this letter please notify us immediately so that we can take care of any further requirements that are needed for your clients and Jahi McMath.

Please contact me at your earliest convenience so that we can further discuss this with you and your clients.

We appreciate the opportunity to assist you and your clients in this dire situation.

Respectfully Submitted,

Allyson Scerri

Allyson Scerri
Founder & President

(631) 286-6166 phone

Allyson Scerri
Founder, CEO, President

www.nbli.org

Steve Scerri
Executive Vice President

(631) 286-6168 fax

Kate DiMeglio
Executive Director

EXHIBIT B

DECLARATION OF ANGELA CLEMENTE

I, Angela Clemente, declare and state the following:

1. On December 17, 2013 I was made aware of Jahi McMath delicate medical situation and the treating hospital's position. On that same day I contacted Chris Dolan the attorney representing her interests and offered my assistance and explained to Mr. Dolan that I can pull a team of specialized experts on this type of subject matter both legally and medically to assist him with his client's needs.
2. I then immediately began to notify each party whose expertise handles the life flight transportation needs, forensic, legal, medical and death experts, housing needs for the family, fundraising, media relations and both acute care and sub-acute care facilities that are open to accepting Jahi McMath into their facility for placing a PEG and Tracheostomy and for long-term care.
3. As an experienced expert in the subject matter of legal, medical, congressional and judicial issues surrounding patients in these similar situations I understand that courts, hospitals, and attorneys are not always aware that there are teams of skilled and specialized experts who specifically step in as a team effort to address the needs of medically vulnerable patients who face the same obstacles as Jahi McMath is facing now. This declaration serves as a formal notice to the court that Jahi McMath does indeed now have a full team of experts supporting all her needs identified in paragraph 2. I will outline within this declaration for the court the expertise and organization[s] and/or individuals who are now working on her behalf.
4. The medically appropriate life flight transportation needs for Jahi McMath from California to New York will be fully covered through our teams efforts.
5. We currently have one confirmed long term care facility that has offered to care for Jahi McMath and we have an additional potential long term care facility. The accepting facility's formal written acceptance letter will be provided to the court with this declaration as an additional exhibit identified as exhibit A.
6. The housing needs for the family of Jahi McMath has also been provided by our team. The address for their residence in New York is as follows: 4079 Sound Avenue Riverhead, New York 11901.

7. Our team will continue to follow through with other unanticipated needs that may arise for Jahi McMath and her family.

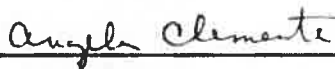
Hereafter is a summary of our team of specialized experts:

- **David Hammons MD is a retired Emergency Medicine specialist, previously board certified. He has more than 20 years' experience on his hospital's ethics committee and took the National Catholic Bioethics Center's one year certification course in Catholic Bioethics. He taught for 9 years on the faculty of the Kaiser-Stanford University Emergency Medicine residency program. He has given talks on end of life care from a medical, legal, and ethical perspective.**
- **Steve Sanborn has extensive experience with life flight transportation needs, emergent fundraising, and media relations. Mr. Sanborn and I handled in full one of the most significant and successful cases in the United States related to out-of-state transfers and acceptance of a critical patient receiving blood and respirator dependent who was declared medically futile. Prior to the patients release and move from the hospital whose care the patient was under we successfully launched a federal investigation into the county hospital's substandard care and fraudulent Medicare practices resulting in Medicare forcing the hospital to return \$284,106.20 back into the patients Medicare account and escalating the federal violation against the hospital under Part A Tier 2 as "severe" and sending a federal investigator in to the hospital to initiate and force "provider education" without which the hospital's doors would be closed.**
- **Angela Clemente is a Forensic Intelligence Analyst, Congressional Consultant and Paralegal. I have worked with the executive, judicial, and legislative branches of the government on many high-profile cases on criminal violations related to federal crimes in both medical and criminal cases. I have twenty years' experience in the field of pathology, clinical laboratory, and emergency medicine. Additionally, I have extensive experience working with the Department of Justice Office of Inspector General, the U.S. House of Representatives and U.S. Senate on legislative needs, congressional investigations pertaining to systemic criminal and medical problems and advising on and launching state and federal prosecutions against official misconduct. In the year 2008 to the present date I launch and lead the team efforts with uniquely qualified experts in the fields**

identified in paragraph 2 for assisting vulnerable patients in identical and similar medical states as Jahi McMath. Additionally, I assess, review, identify and advise on medical negligence cases also aiding in the launch of forensic criminal investigations on these same subject matters.

- Bobby Schindler and The Terri Schiavo Life & Hope Network is a national enetwork of resources and support for the medically-dependent, persons with disabilities and the incapacitated who are in or potentially facing life-threatening situations. It has communicated with and supported more than 1,000 families, and has been involved in hundreds of cases since Terri's March 2005 death.
- Dana Cody- Life Legal Defense Foundation is a public interest law firm that provides resources to defend the lives of vulnerable human beings who are under threat of death because life-sustaining care is not being provided. LLDF provides continuing legal education on the issue of forced death. Notably, LLDF helped support the defense of Terri Schindler Schiavo's life. LLDF has been a part of the effort to defend Jahi McMath's life and continues to support efforts to see Jahi moved to a facility that will treat her with the dignity she deserves.
- The Wrongful Death and Injury Institute is multifaceted organization that specializes in the unethical and unprincipled practices of the healthcare industry and unregulated death investigation system nationwide within hospitals, prisons, jails, nursing homes, and assisted living residences.
- Dr. Paul A. Byrne is a neonatologist and a Clinical Professor of Pediatrics. He is past President of the Catholic Medical Association. He is the producer of the film Continuum of Life and the author of Life, Life Support and Death, Beyond Brain Death, and Brain Death is Not Death. Dr. Byrne has presented testimony on life-death issues to nine state legislatures beginning in 1967. He opposed Dr. Jack Kevorkian on Cross-Fire, and has appeared on Good Morning America, the British Broadcasting Corporation (BBC) documentary, "Are the donors really dead?", and public Television in Japan. He is the author of many articles in medical and law journals and the lay press.

I declare under penalty of perjury that the foregoing information is true and correct.
Executed this 29th day of December 2013.



Angela Clemente

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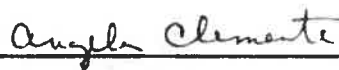
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I declare under penalty of perjury that the foregoing information is true and correct.
Executed this 29th day of December 2013.



Angela Clemente

EXHIBIT C



Date: December 29, 2013

To : Chris Dolan

From: Medway Air Ambulance, Inc.

Re: Air Ambulance – Jahi McMadh

MedWay Air Ambulance makes the following proposal for air ambulance transport from Oakland, Ca to Long Island, NY:

Aircraft: Private Lear Jet Aircraft - 5:35 hours 1 stop
Medical: ICU RN / Respiratory Therapist
Equipment: AIS incl oxygen and ventilator
Ground Transportation: included in Oakland and Long Island
Passengers: 2
Luggage 3 medium size suit cases

Cost of the transport : \$31,910.00USD.

Discount Available: 12/31- \$27,950.00.

All licenses, insurance, and information available at
www.medwayairambulance.com

Thank you for the opportunity to quote this transport, and should you or the family have any further questions please contact us at 800-233-0655 24hours a day 7 days a week.

Sincerely,
Rick Moore
President

PO Box 490907
Lawrenceville, GA 30049-0907
800-233-0655 770-963-1412 Fax 770-962-3253
Email: medwayair@aol.com

1 Christopher B. Dolan, Esq. (SBN 165358)
 2 THE DOLAN LAW FIRM
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 4 San Francisco, California 94102
 5 Tel: (415) 421-2800
 6 Fax: (415) 421-2830

7 Attorneys for Plaintiffs
 8 LATASHA WINKFIELD

9
 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12

10	LATASHA WINKFIELD, an individual)	Case No.
11	parent and guardian of Jahi McMath, a)	
12	minor)	Declaration of Paul Byrne M.D.
13	Plaintiff,)	
14	v.)	
15)	
16	CHILDRENS HOSPITAL OAKLAND, Dr.)	
17	David Durand M.D. and DOES 1 through)	
18	10, inclusive)	
19	Defendants)	
20	_____)	
21)	
22)	
23)	
24)	

25
 26 1). I Dr. Paul Byrne am a medical doctor, Board Certified in Pediatrics with a sub-
 27 board in Neonatal-Perinatal Medicine of American Board of Pediatrics.
 28

- 1 2). I have served in many academic positions including as the Director of
2 Neonatology, St. Charles Mercy Hospital, October 2000-2012, Oregon, OH
3 Neonatologist, St. Charles Mercy Hospital, 1991-2012, Oregon, OH.
4
5 3). I am licensed to practice medicine in Ohio, Nebraska and Missouri.
6
7 4) I have published articles on brain death and related topics in the medical literature,
8 law literature and the lay press for more than thirty years.
9
10 5). I have been qualified as an expert in matters related to central nervous system
11 dysfunction in Michigan, Ohio and Virginia.
12
13 6). I have examined and treated children that have been diagnosed as "brain dead" and
14 have, with proper treatment, seen them recover from Brain death to varying degrees
15 including one patient which recovered to finish school, get married and have children
16 and live an otherwise productive life.
17
18 7). Although not licensed in Virginia, I provided expert testimony in the case of the
19 Matter of Baby K, 832 F.Supp 1022 (E.D.Va.,1993), wherein the issue of brain death in
20 a child was the central issue. In Baby K the Hospital sought declaratory relief that it
21 had no obligation to continue to provide respiratory support to an anencephalic child
22 (congenital defect where there is a brain stem but cerebral cortex is absent). The
23 hospital in Baby K., like the hospital here, encouraged her mother to remove her from a
24 ventilator stating that such treatment was "futile" and decided to "wait a reasonable
25 time for the caregiver to terminate aggressive therapy." The court in Baby K, stated,
26 Reflecting the constitutional principles of family autonomy and the presumption in
27 favor of life, courts have generally scrutinized a family's decision only where the family
28 has sought to terminate or withhold medical treatment for an incompetent minor or
incompetent adult. See, e.g., Cruzan, 497 U.S. at 270-75, 110 S.Ct. at 2847-49 (and

1 cases cited therein). In a recent case in which a hospital sought to terminate life-
2 supporting ventilation over the objections of the patient's husband, a Minnesota state
3 court refused to remove decision making authority from the husband. In re Wanglie,
4 No. PX-91-283 (Prob.Ct., Hennepin Co., Minn., June 28, 1991). Likewise, where
5 parents disagreed over whether to continue life-supporting mechanical ventilation,
6 nutrition, and hydration for a minor child in an irreversible stupor or coma, a Georgia
7 state court gave effect to the decision of the parent opting in favor of life support.
8 (Matter of Baby K 832 F.Supp. 1022, 1031.
9

10 8) I have personally seen, but have not conducted a full physical examination of Jahi
11 McMath because I am not licensed to practice medicine in California. I have also e
12 reviewed Dr. Fischer's medical examination record dated 12/23/2013. I have read
13 excerpts of Dr. Shannahan's deposition testimony including the following;
14

15 Q. . If you look at your second examination, please,
16 12/12/2013. The third paragraph down you wrote in the
17 last two sentences: Her diabetes insipidus suggests
18 hypothalamic death; can you tell us what that means,
19 please.

20 A. So she was excreting much more urine than a
21 normal person should and not being able to retain a normal
22 amount of water, which indicates that she was missing a
23 hormone excreted by the hypothalamus and that the
24 hypothalamus was not working correctly.

25 Q. Is there an examination that can measure that in
26 some sort of a device, machine or otherwise?

27 A. Yes, it's blood tests measuring the sodium level
28 and the concentration of the urine, so it's an inability
to concentrate the urine, and then there is rising sodium
blood levels as a consequence, and that can be treated
with a medication and corrected.

Q. Did you examine any of the blood tests to see
whether or not there was confirmation of your
suggestion?

A. Yes.

Q. Is that reported in here?

A. No, it is not.

1 Q. What tests did you review?
2 A. The urine concentration and sodium levels that
3 were part of her lab tests.
4 Q. In the -- did you request any type of medications
5 to be given to address that hypothalamic condition?
6 A. No.

- 7 8). I have reviewed the literature published in the Journal of Neurology including articles
8 written in 2008 and 2010 which demonstrate that there no consensus in the medical field as
9 to what constitutes death, whether it is brain death, cessation of the heart, etc.
10 9). I have, by invitation of the mother been bedside to see Jahi McMath. I personally
11 observed that when the grandmother stimulated Jahi with her voice and touch, Jahi moved
12 her arms and legs with a squirming movement- in my opinion this signifies that she is not
13 dead
14 10). EEG measurements are measurement of only the 1cm outer region of the brain and
15 provides no information of the interior function of the brain
16 11). In my professional opinion she is not a cadaver- her heart beats thousands of times a
17 day and has done so since this event- she is a living person- she is not dead
18 12). She should receive treatment as she is alive just like anyone else with severe head
19 injury. Jahi has not had nutrition for two weeks she needs nutrition, proteins necessary for
20 the recovery of the brain- thyroid and adrenal hormones and evaluations for blood gasses
21 and electrolytes and have necessary adjustments made to help her get well
22 13) If she gets treatment she will have a chance to recover brain function.

23
24 Signed under penalty of perjury this 30th day of December, 2013, in Oakland California.
25

26 *Paul A. Byrne MD 12/30/2013*
27 Dr. Paul Byrne
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COMPLAINT

5.

CONFIDENTIAL

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT OF CALIFORNIA
OAKLAND
UNLIMITED JURISDICTION

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

Plaintiff,

v.

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

Case No.:

Order Granting Plaintiff's Ex Parte
Application for a Temporary
Restraining Order to Enjoin Defendants from
Ending Life Support

[Filed Concurrently with Plaintiff's Complaint]

To all parties and their attorneys of record therein, Plaintiff's Ex Parte Application for a
Temporary Restraining Order to Enjoin Defendants came before this Court on
_____ in Department _____ of the above-entitled Court. Counsel for all
parties were present at the hearing and this Court finds were provided notice.

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The matter having been argued, evidence having been submitted, and proof having been made to the satisfaction of the Court, IT IS ORDERED THAT:

JAHl McMath shall remain on a ventilator until _____,
further the hospital is ordered to provide a nutrition tube and a tracheostomy tube so as to allow Jahi to be transferred to an alternate facility, Order to Show Cause why a Preliminary Injunction should not be ordered is set for _____. The briefing schedule should be as follows:

Date: _____ Judge _____