

Jahi McMath- What can we Learn from her case?

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The Case

- 13 year old California Girl admitted to Children's Hospital Oakland for UVPP surgery to treat her sleep apnea 9 Dec 2013.
- Post op course complicated by Bleeding resulting in cardiac arrest.
- Declared brain dead 12 December
 - Nuclear brain scan shows no brain flow
 - EEG shows no cortical activity
 - Exam shows no brainstem reflexes remain.

The Courts

- Family refuses to accept that Jahi is dead, and go to court.
- Court issues injunction prohibiting Children's Hospital from removing the ventilator until Jan 7 2014 at 5 PM.
- The Hospital accedes to give the family time to come to grips with her diagnosis.
- Alameda County Coroner issues Death Certificate, but leaves cause of death blank pending autopsy

The Courts

- Jahi's Mother, Nailah Winkfield, refusing to believe her daughter is dead as long as her heart is beating, has wanted to transfer Jahi to another facility and hoped to force Children's Hospital either to insert the tubes (Trach and PEG) or to allow an outside doctor to do the procedures.
- Judge Grillo rejected the family's move to have the hospital insert the tubes, noting the girl could be moved with the ventilator and intravenous fluid lines she has now. He also refused to compel the hospital to permit an outside doctor to perform the procedures on its premises.

The Transfer

- David Durand, the hospital's Chief of Pediatrics, said the girl was released to the coroner. The coroner then released her into the custody of her mother, Nailah Winkfield, as per court order, Durand said in an e-mail.
- On Friday, Alameda County Superior Court Judge Evelio Grillo said Jahi could be transferred under an agreement with Children's Hospital and the girl's mother will be held accountable for developments that could include Jahi going into cardiac arrest.
- Associated Press in Oakland
- theguardian.com, Thursday 9 January 2014 09.25 EST

The Transfer

- Akin to Texas law on Futility, allowing recourse to other facilities establishes an ad hoc community standard of care.
- If no other facility would take her, the family would have to accept that Children's was doing the right thing.
- They were able to find a facility, most likely in California, to take Jahi and perform the trach and PEG.

The Controversy

- Consumer Watchdog's Christmas Eve email to supporters prominently mentioned the Jahi McMath case to support the need for its advocacy work and for lifting the state's 38-year-old cap on medical malpractice awards.
- "Hospitals like Children's actually have an incentive to let children like Jahi die," the email said. "If kids injured by medical negligence die, the most their families can recover is \$250,000. ... If children who are victims of medical negligence live, hospitals are on the hook for medical bills for life, which could be millions."
- If it gets on November's ballot and passes, the Troy & Alana Pack Patient Safety Act would raise the cap on medical malpractice awards to about \$1.2m, a limit that would increase based on inflation, said Bob Pack, chair of the campaign committee. He said the group has collected about 500,000 signatures and wants 300,000 more by 25 March to assure there are enough valid ones to qualify for the ballot.



The Controversy

- Dolan, the family attorney, is a board member of Consumer Attorneys of California, the prime group funding the ballot initiative to lift the cap on pain and suffering awards. But he said he was dismayed that Consumer Watchdog used Jahi's name as a fundraising tool.
- "Using Jahi's case as an example is wrong and that is not what this case is about," he said in a text message to the Associated Press.
- Hospital spokesman Sam Singer also criticized the use of Jahi's case for fundraising, calling it "tasteless and thoughtless".

The Controversy

- The hospital has argued since before Christmas that Jahi's brain death means she is legally dead and she should be disconnected from the ventilator. It also has refused to fit her with a feeding tube or a breathing tube that would help stabilize her during a move, saying it was unethical to perform medical procedures on a dead person.
- "We hope that the family finds peace in this very, very tragic story," Hospital spokesman Sam Singer said.

The Ethics of the Case

- Jahi's story is, unfortunately, clear cut. Once brain death is declared, doctors have the right to stop treatments including life-support. There is no duty to treat the dead. No matter what the family might say, death is a clear line beyond which treatment need not and should not continue.
- So why are we hearing so much dispute about stopping the technology that is keeping Jahi's heart beating and breath going even if she is no longer here? It is because the hospital is trying hard to let the parents and family accept her death. They have the legal right to stop, but given all that has happened they feel a moral duty to try and honor the family's wishes. The technology is not being turned off yet -- not because we don't know who has the authority to do so. It is because those in authority are using the technology not to support a little girl but to support her family, who are so heart-broken by their loss they cannot yet accept it.
- *Arthur Caplan, Ph.D., is the head of the Division of Medical Ethics at NYU Langone Medical Center.*

Jahi McMath



Update Dec 2014

- Dec 2014
- Jahi remains on ventilator and unresponsive
- In a “home Care” environment in New Jersey
- New Jersey State Law allows a family to reject brain death determination
- Family’s lawyer considering going to court to have the death certificate revoked.

As reported on AOL news Dec 22, 2014