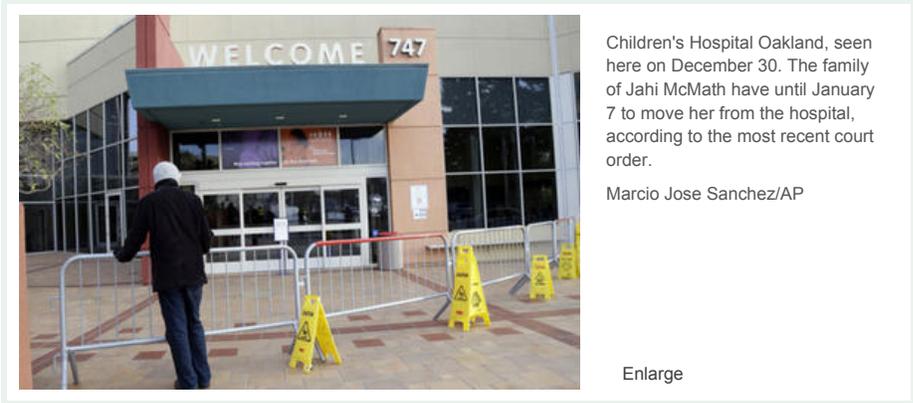


# Jahi McMath case: Does definition of 'death' need to be rethought?

The family of Jahi McMath now has until Jan. 7 to move her from Children's Hospital Oakland, a California judge has ruled. Family members deem the teen to be alive, whereas six doctors have said death has occurred, as defined by law.

By Daniel B. Wood, Staff writer / December 31, 2013



Children's Hospital Oakland, seen here on December 30. The family of Jahi McMath have until January 7 to move her from the hospital, according to the most recent court order.

Marcio Jose Sanchez/AP

Enlarge

## LOS ANGELES

The case of Jahi McMath, the Oakland, Calif., 13-year-old who went into cardiac arrest after a tonsillectomy and is now attached to a ventilator, is raising challenging ethical and medical issues concerning how a society should define death – as well as spotlighting conflicts that can arise as a result of technological advances that allow for more precise information about bodily functions.

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Her case is also prompting others, who upon contemplating scenarios in which they might find themselves in situations akin to Jahi's, are clarifying in writing and to next of kin what their wishes would be. Children's Hospital Oakland, where the girl underwent the tonsil surgery, said on Dec. 12 that Jahi is brain-dead and wants to remove her body from a ventilator, but her family has resisted, saying she is still alive.

A California judge has now extended until Jan. 7 a deadline for letting the hospital turn off the machines oxygenating Jahi's body.

At issue is whether the teen is alive or dead, according to the definition of brain death under California law. Six doctors have examined her and deemed her deceased according to state

law.

The hospital has held that keeping Jahi connected to a ventilator is inappropriate because she is not alive. In addition, the procedures are expensive.

California and most states define death as no brainwave activity. But conflicts have arisen over what precise physical structure constitutes the brain, with some broader definitions including the brain stem.

Local news broadcasts have aired a heated exchange between a hospital spokesman and a lawyer for Jahi's family over the definition of death and whether the girl might recover. They have also showed her mother insisting to officials, in front of crowds, that her daughter is breathing, has a heartbeat, and responds to her touch and presence.

Despite its raw emotion and ghoulish details, the case at least is serving to inform the public about the issues that can cloud end-of-life decisions, some experts say.

Jahi's case "illustrates the impacts of improved technology in maintaining life while pushing our boundaries – moral, legal, and practically – of the concept of death," Kevin Johnson, dean of the law school at the University of California, Davis, writes in an e-mail. "As technology changes, the ability to keep 'life' going through life support techniques ... will advance and continue to press our notions of life and death. Legally speaking, the challenges have practical impacts on health-care providers, hospitals, and insurance companies, as mainlining someone on life support is not cost-free."

He and others say the law, as it has done in the past, will need to balance humanitarian concerns and economic interests.

Wendy Patrick, a prosecutor and a working minister who is versed in the theological and legal arguments of the debate, says the issue is particularly pointed because of the number of cases over time in which individuals have revived after being declared dead.

"There are enough of these cases to be statistically significant," she says, noting that in 2007 an Arizona man came back to life after being scheduled to have his organs removed for transplant. "And of course, all Christians know that Lazarus was raised after four days in the grave."

She also cautions that not all pertinent details of Jahi's case may have been disclosed, because of privacy law. "The public needs to remember that they are judging only on details that are in the media," Ms. Patrick says. "It's possible there are more fine points in this that the rest of us know nothing about that could change our minds."

Some experts suggest that, in extending the deadline for Jahi's family, the judge hopes to avoid having to make a decision one way or the other.

"The judge is hoping some appeals court will pick up the case, and he won't have to be the one to decide it," says the Rev. John Paris, a professor of bioethics at Boston College, in an e-mail. "Nobody wants to take responsibility."

"She's already dead but he's hoping her heart stops so then the family says, 'Well, the heart stopped and we accept God's will,' " writes Father Paris. He is doubtful that an appeals court would step in, because "there's no legal issue."

Complicating the issue are media reports that some long-term care facilities have stepped forward to say they would take custody of Jahi.

"I have seen those reports, but to date not one single facility has come forward to say that," says Sam Singer, spokesman for Children's Hospital Oakland.

A 2005 Gallup poll taken when the high-profile Terri Schiavo case was in the news found that 85 percent of Americans said they would agree with having life-support systems removed for themselves.

The issue is arising again among families as a result of Jahi's case. Says family advice columnist April Masini: "Those with wills and a sense of their own mortality are now making notes to call their estate attorneys to designate in their living wills what they want for their own ends of life – yes or no feeding tube? Yes or no drastic measures?"

The US Supreme Court weighed in on the matter of who gets to decide to withdraw life-support systems in 1990, in the case *Cruzan v. Director, Missouri Department of Health*. In that case, the patient's parents, convinced their daughter's recovery was not possible, sought to remove a feeding tube and a breathing tube, but the hospital workers refused.

"Missouri would not terminate the procedure despite the parents' wishes, as [Chief Justice William] Rehnquist said that the young woman in the coma had not made it clear beforehand that she did not want the extraordinary means applied to her, despite her parents saying that at one point in her life she had said she did not want to live like a vegetable," says Robert Langran, a constitutional scholar at Villanova University. The woman remained in a coma for a while after the decision, and her case led many people to clarify how they would wish to be treated in a like situation.

The divergence of opinion in Jahi's case, says Paris, should force greater legal clarity about what constitutes death.

Some want to declare all individuals as dead who permanently lack consciousness (known as a permanent vegetative state, or PVS), or who are born with anencephaly, he notes. Others want to revert to the previous standard of irreversible cessation of heart and respiration. Still others, he says, argue that it should be "total breakdown of cell and tissue."

Extreme right-to-life supporters, he adds, "reject lack of electrical activity in the entire brain, including the brain stem, as death, because they see it as a means for abortion of the newly fertilized egg, which does not have any brain," says Paris. "Given that mix, what is the new agreed-upon standard?" he asks. "Or do we want 300 million individuals setting their own standard?"

Perhaps the issue is best settled outside the legal system, others suggest.

"If you believe in science, then the reality is this child has died," writes Paris of Jahi.

"Now you don't have to believe in science. And remember, what this family is asking for is a miracle, and that's beyond the court's ability to provide."

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