

# Jahi McMath: where the law stands when hospitals and families disagree

The legal dispute over whether to disconnect Jahi McMath from life-support systems took a turn for the Oakland hospital, as a court-appointed physician backed findings that the teen is brain dead.

By Gloria Goodale, Staff writer / December 24, 2013



Nailah Winkfield, mother of Jahi McMath, attends a court hearing to discuss the treatment of her daughter in Oakland, Calif., on Monday. McMath, 13, remains on a ventilator at Children's Hospital Oakland after suffering complications following a tonsillectomy surgery.

Kristopher Skinner/The Contra Costa Times/AP

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## LOS ANGELES

In the legal battle over whether to disconnect 13-year-old Jahi McMath from an Oakland hospital ventilator, a court-appointed physician, Dr. Paul Graham Fisher, concurred Tuesday with prior medical opinion that the teen is brain dead.

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That finding follows a partial victory for the family on Monday, when a judge deferred any termination move by the hospital until Dec. 30. The family had insisted that she remain on machines through the Christmas holiday, despite the fact that the hospital has maintained since Dec. 12 that the girl is brain dead, and not merely comatose or vegetative.

However, legal experts say the issue about who ultimately gets to decide is settled in California law.

The legal statutes on brain death are unambiguous, says the Rev. John Paris, professor of bioethics at Boston College, who frequently has served as an expert witness in court cases involving termination of medical

services. "If, in fact, the court is persuaded that the girl is brain dead, then the law is clear, the girl is dead and no further medical intervention is warranted," he says. "If an outside person confirms this, the issue is over," he says adding, "this has been done

many times.”

The issue of whether the family or the hospital has final authority in terminating medical procedures has been addressed in such high-profile cases as the five-month-old Texas boy Sun Hudson in 2005. The child was born with extreme dwarfism and the doctors maintained that further pumping air into lungs that would not expand was not warranted. Under a 2003 state statute, the hospital had the right to terminate medical procedures against the mother’s wishes, once an ethics committee agreed. She had 10 days to find another facility willing to treat the boy, but could not.

While the case did not involve brain-death, it did address the question of who has the ultimate authority over medical intervention, points out Father Paris.

“The statutes prevailed in that case,” he says, adding, “and that is likely what will happen in this [Oakland] case as well,” he adds.

While the law may be clear, the more ambiguous politics of race and class are helping inflame the conflict. The girl’s mother told CNN on Monday that the hospital has not yet explained why a tonsil surgery could result in death.

“They have not given me a reason yet of why she went into cardiac arrest. They haven’t even given me a reason for her bleeding. They haven’t given me a reason that they couldn’t stop the bleeding,” Nailah Winkfield said.

Long-simmering racial tensions in Oakland are coming to the surface, points out Paris. “Mistrust of authorities runs very deep in that city,” he adds. The case touches on some of society’s most difficult issues, agrees Los Angeles forensic psychiatrist Carole Liberman, a frequent expert witness in legal cases involving medical procedures.

“The truth is that the hospital never anticipated that Jahi’s family would take it this far,” she says. While she is not directly involved in the case, she notes that the press coverage appears to indicate that hospital administrators seemed to expect “the family to just accept the hospital’s decision and go away quietly.”

While costs of care are highly sensitive in end-of-life situations, they cannot be ignored, she notes. “The hospital is in a rush to pull the plug because they are concerned that they will never be fully reimbursed for the expensive treatment Jahi is receiving,” she says.

The court has given the family of Jahi McMath one last Christmas with their daughter, “after which it’s highly unlikely they’ll continue to force a hospital, an insurance company, and everyone else who helps foot the bill for pricey medical intervention to keep the brain dead teen on life support,” says online family advice expert April Masini.

“McMath’s oral surgery gone horribly wrong is a tragedy, and whenever there is tragedy, people point the finger and create drama, in an attempt to understand and accept how life can be so fragile and can be gone with little or no warning,” she says via e-mail. While it may not seem that’s what they’re doing, she says, “they are.”

How to determine the end of human life is still being debated, with differing opinions on the technicalities of brain death and its finality enshrined in law from state to state, as

well as other nations.

“This case is another opportunity for everyone who cares about intervention to reconsider life’s endings,” says Ms. Masini, adding, “whether it’s abortion, capital punishment, euthanasia, medical intervention, or the absence of it, these are all situations that hinge on our ability to make decisions and accept outcomes that have to do with when life ends and how.”

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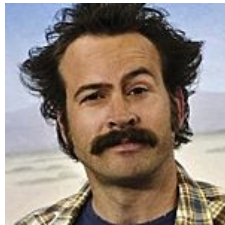
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