

-----SUPERIOR COURT OF NEW JERSEY
 APPELLATE DIVISION
 DOCKET NO. A-003849-08 T2

JACQUELINE BETANCOURT, :
 Plaintiff/Respondent, : Chancery Action
 :
 vs. :
 : On Appeal from a Final Decision
 : of the Superior Court of
 TRINITAS HOSPITAL, : New Jersey, Chancery Division
 : Docket No. UNN-C-12-09
 Defendant/Appellant. :
 : Sat Below: Hon. John Malone, J.S.C.

 BRIEF AND APPENDIX ON BEHALF OF APPELLANT, TRINITAS HOSPITAL,
 IN SUPPORT OF THE APPEAL

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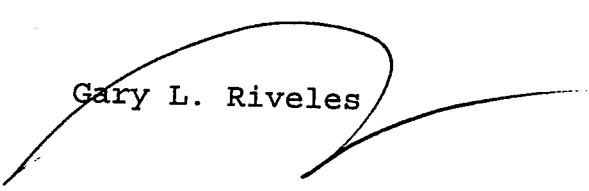
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PRELIMINARY STATEMENT

This is a matter of first impression in the State of New Jersey. At issue is whether a hospital and its affiliated physicians can be compelled to provide inappropriate treatment when they have concluded, after consultation with medical experts and the hospital prognosis and ethics committees that the care sought by the family is contrary to recommended standards of care.

In the matter *sub judice*, the plaintiff's father, Ruben Betancourt, suffered an anoxic injury and is in a moribund, permanent vegetative state. Subsequent to the anoxic injury, Mr. Betancourt became ventilator dependent, feeding tube dependent and his renal function deteriorated into renal failure, requiring dialysis several times weekly. Notwithstanding all appropriate care, because of his poor nutritional status, Mr. Betancourt developed severe decubitis ulcers around his body, resulting in deep infections extending into the bone that are not likely to heal. While the treatments being rendered support respiration and, therefore, continue biologic life, the patient continues to essentially deteriorate and move closer to death. In short, Mr. Betancourt is dying and that dying is being prolonged by the treatment rendered. The hospital and physicians seek a ruling which preserves the respect for life over its length and which would comport with

the standard of care in these extraordinary situations. This is a matter which requires the guidance of the Court to determine when it is proper to withhold inappropriate medical treatments in situations where the care to be rendered is futile and below the standard of care.

The Trial Court concluded that because the family desired all heroic measures to be implemented, there were no circumstances which would justify withholding inappropriate treatments. While family desire should certainly be a component of any analysis, it should not be the talisman which controls. Physicians must be able to exercise their judgment, in consultation with medical experts and appropriate hospital committees, to determine when care is appropriate and the respect for life warrants cessation of treatment. The questions presented here implicate multiple ethical, moral and medical dilemmas. This is an issue that will likely be repeated with advances in medical treatment that can maintain biologic life long beyond historical expectations. The defendant seeks a ruling which balances the family's interest with the need for the medical providers to maintain their independence and exercise their judgment in a manner which comports with all applicable standards of care.

For the reasons that will follow, defendant respectfully requests that this Court enter an Order reversing

the decision of the Trial Court and authorizing the hospital and its affiliated physicians to withhold inappropriate treatments when they are below the standard of care.

PROCEDURAL HISTORY

This matter was initiated by the filing of a Verified Complaint seeking to appoint Jacqueline Betancourt as guardian and to restrain the defendant, Trinitas Hospital, from discontinuing allegedly life-sustaining medical treatment. (1a). The application was supported by an Affidavit of Carl S. Goldstein, M.D. (6a). A Brief in support of the application was also filed. (Brief omitted pursuant to Rule 2:6-1(a)(2)).

In response to the Verified Complaint, the defendant filed a Brief with attached Certifications of Arthur Millman, M.D.; Bernard Schanzer, M.D.; Maria Khazaei, M.D.; and William McHugh, M.D. (Brief omitted pursuant to Rule 2:6-1(a)(2); (11a; 17a; 22a; 27a;)). Defendant also submitted several policy statements regarding the cessation of life-sustaining treatment when a patient is terminal. (31a, 32a, 35a). On January 23, 2009, the Court entered an Order temporarily restraining the hospital from discontinuing or suspending medical treatment. (9a). Hearings were conducted before the Honorable John F. Malone, J.S.C., on January 22, February 17 and February 23, 2009. (T1, T2 and T3).

On February 10, 2009, the Court entered an Order again restraining the suspension of treatments and setting this matter down for further hearings. (42a).

After taking testimony, the Court entered a written decision on March 4, 2009, appointing Jacqueline Betancourt as guardian and ordering Trinitas to continue to provide all previously supplied services. (44a). The Court entered an Order memorializing this decision on March 20, 2009. (52a).

Thereafter this appeal ensued. Defendant filed a timely application to accelerate the appeal which was granted.

STATEMENT OF FACTS

In or around November 2007, Ruben Betancourt was diagnosed with a malignant thymoma, a cancerous condition of the thymus gland, with pericardial metastasis. On January 22, 2008, Mr. Betancourt underwent a mediastinal sternotomy, resection of the malignant thymoma with resection of graft and reconstruction of the innominate artery. Post-operatively, the patient self extubated with subsequent respiratory/cardiac arrest. While the patient was resuscitated, he suffered anoxic injury. (44a).

On or about March 4, 2008, the patient was discharged to the Kindred Ventilator Facility for weaning from the ventilator. He was, thereafter, discharged from Kindred to the JFK Head Injury Rehabilitation Program and then to an Elizabeth nursing home. On June 10, 2008, the patient was readmitted to Trinitas with a diagnosis of hypoglycemia. He again needed continued ventilator support. On June 25, 2008, the patient was discharged to Genesis for long-term ventilator care. He returned to Trinitas on July 3, 2008 with a diagnosis of renal failure, and dialysis was initiated. (44a).

The patient remains at Trinitas, despite attempts to transfer him to another facility which can provide comparable care, on artificial ventilator, dialysis and nutrition by feeding tube. (44a). Mr. Betancourt remained in a permanent vegetative state until his death. (44a).

During the hearings on the Order to Show Cause, defendant offered the testimony of Arthur Millman, M.D., the patient's attending physician. Dr. Millman described the patient's current diagnosis:

Q. What is Mr. Betancourt's current diagnosis?

A. Well he has multi-organ system failure. His kidneys have failed, his lungs have failed. He's intermittently septic.

He has an underlying malignant thymoma which was brought into surgery in the first place, and he has hypertensive heart disease, intermittent congestive failure which is currently under control and the overwhelming problem is of course the permanent anoxic encephalopathy with total loss of cognizant function.

Q. The last part of Mr. Betancourt's diagnosis, doctor, can you explain that in - -

A. While he had anoxic episode in the hospital after his surgery. He lost all his cognizant brain function.

And initially he was treated aggressively in the hope that perhaps that would come back which sometimes it does.

But if you don't see any change for the better within a few days, the likelihood of return to cognizant function is virtually zero, particularly in the older adult. It's different in children.

(2T:9-23 to 10-19).

Dr. Millman also described the patient's prognosis:

Q. Doctor, in your medical opinion, what is Mr. Betancourt's prognosis:

- A. He's terminally ill. He has been dying slowly and painfully.
- Q. Can you describe the mechanical measures that Trinitas Hospital is using to keep Mr. Betancourt alive currently?
- A. He's on a ventilator that supports the breathing. He's being dialyzed at least three times a week, that supports the kidneys. He gets antibiotics for treatment of some truly horrific decubitus ulcers and continued antibiotics.

He's receiving nourishment via a PEG tube, it's a tube that goes into the stomach and provides access for food, medicines, things like that.

And he gets really aggressive nursing care. They're always turning him from one side or another, desperately trying to treat the decubiti with which he was unfortunately admitted on the current admission which is, must be something likely seven months old, something like that.

- Q. Doctor, what, in your medical opinion, is Mr. Betancourt's neurological state?
- A. He's in a non-cognitive state. That is, there's no higher mental function. None of the things that make us human are present. All that is left is brain stem function and the nervous system, nothing that is aware.
- Q. Is - in your opinion is Mr. Betancourt permanently unconscious?
- A. Yes.

(2T:11-4 to 12-9).

Finally, Dr. Millman testified that in his professional medical opinion it is inconsistent with accepted standards of medical practice to continue dialysis for Mr. Betancourt. (2T:23-13 to 17). He testified that

Mr. Betancourt's illness is irreversible and the risks and burdens of continued dialysis outweigh any benefits. (2T:25-4 to 10). He continued that dialysis will only prolong his dying in a painful fashion. (2T:25-11 to 15).

Defendant also presented the testimony of William G. McHugh, M.D., the Medical Director at Trinitas Hospital. (2T:62-8 to 16). Dr. McHugh became involved in this matter as a member of the Prognosis Committee at Trinitas Hospital. (2T:62T-17 to 63T-10).

Dr. McHugh, based upon his evaluation, discussed the patient's current condition and his prognosis:

Q What - from your awareness, what is Mr. Betancourt's current diagnosis?

A He's in a persistent vegetative state, he's diabetic, he has chronic obstructive pulmonary disease, he has renal failure. He has hypertensive cardiovascular disease with past congestive heart failure. He has multiple major decubiti and osteomyelitis of the bone.

Q In your professional opinion, what is the outlook for Mr. Betancourt?

A There is no outlook. He cannot regain consciousness at this state.

Q Now besides the life support, if you will, to use a layman's term, the ventilator, the dialysis, feeding tube, is there any affirmative treatment that would improve Mr. Betancourt's condition?

A No. There's nothing possible.

Q In your 50 years of medical experience, have you seen a patient that's been in a persistent

vegetative state for as long as Mr. Betancourt has improved?

A No. This is probably a record. I mean we deal with persistent vegetative state often.

Usually treatment is withdrawn after several days or a week of no responsiveness. It's unusual to see - I've never seen anyone go quite this long.

Q And in your professional medical opinion, is continuation of the mechanical assistance, the ventilator, the feeding tube, the dialysis is that medically appropriate in Mr. Betancourt's case?

A Can I comment freely?

This is a state that did not exist when I started in medicine. These people were dead. He's neither alive nor dead at this point. We have him on lung support, kidney support, nutritional support, support for his recurrent infectious processes.

We couldn't do this when I started. It is kind of an artifact of modern medicine that this could be continued.

Q In your opinion, is Mr. Betancourt's condition terminal?

A Yes, but it may take some time. And he's been terminal for the last, frankly, for the last year.

Q What will happen between now and that time to Mr. Betancourt?

A It depends on how much we continue to intervene.

Q Well let's assume things stay the way they are today, you know, whatever the mechanical sustaining treatment is provided. What will happen to Mr. Betancourt otherwise?

A This could go on for quite a while. I think he'll continue to deteriorate, continue to breakdown, he will not wake up. He will not become conscious. He'll basically get no better and likely slowly get worse.

Q And what - doctor, what specifically will get worse?

A The skin will breakdown further. You have to realize that the only organ that is functioning really is his heart. Everything else is mechanically supported at this time.

His brain is irreparably damaged. His kidneys don't work. His lungs don't work. His skin is broken down. I guess his liver is working, but everything is irreparably damaged.

(2T:64-11 to 66-25).

Defendant also produced Bernard Schanzer, M.D., the Chief of Neurology at Trinitas Hospital and a treating physician of Mr. Betancourt. (2T:77-6 to 25). Dr. Schanzer also served on the Prognosis Committee. (2T:78-12 to 19).

Dr. Schanzer described that Mr. Betancourt is in a permanent vegetative state:

Q Okay, and can you describe for the Court what that is?

A. I felt that he was in a vegetative state, and I think that as was mentioned before, he's been in a persistent vegetative state.

And at this point, looking at a year after, we can say that he is in a permanent vegetative state.

And you know what is the difference?

A vegetative state is somebody who is unaware of self and of his environment.

It become [sic] persistent by definition if it lasts for more than a month.

And then the question comes in as to in terms of prognosis so that when we talk about a permanent vegetative state, then we're making a statement of prognosis beyond the descriptive term of the patient's condition.

So that at this point, he is in a permanent vegetative state having continued to be in this for over a year.

(2T:81 to 25).

Defendant also produced Paul Veiana, M.D., another member on the Prognosis Committee. (2T:113-9 to 25). Dr. Veiana testified that maintaining dialysis would not meet the standard of care for the patients at Trinitas Hospital.

Q Doctor, in your experience at Trinitas and otherwise, are you trained or required by your profession to maintain a certain standard of care for your patients?

A Yes, we are.

Q And does the continued mechanical support of Mr. Betancourt meet or is consistent with the professional standard of care?

A No it's not because there is no - at least from my opinion, there is no chance that he's going to recover. We are just in a sense doing something that we should not be doing.

(2T:119-17 to 120-3).

Finally, defendant produced Maria Silva Khazaei, M.D., the patient's treating nephrologist. (3T:66-8 to 12).

Dr. Khazaei described that continuing dialysis in light of Mr. Betancourt's situation as merely prolonging an imminent dying process and as against the standard of care. (3T:68-1 to 70-13).

In addition to the family members, plaintiff produced the testimony of Carl Goldstein, M.D., a doctor consulted by the family with respect to the patient's renal status. (3T:43-15 to 24). Dr. Goldstein did not testify about the patient's neurological status or his prognosis. His only testimony was that dialysis was appropriate based upon the family's request.

Mr. Betancourt, pursuant to Court Order, remained at Trinitas Hospital receiving ventilator support, dialysis, and nutritional support until his death on May 29, 2009.

For the reasons that will follow in the annexed Legal Argument section of this brief, defendant respectfully requests that the Trial Court's Order compelling these treatments be reversed.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN COMPELLING A HOSPITAL AND ITS INDEPENDENT PHYSICIANS TO PROVIDE MEDICAL SERVICES THAT ARE CONTRARY TO RECOGNIZED STANDARDS OF CARE TO A MORIBUND PERMANENTLY VEGETATIVE PERSON WHICH WILL DO NOTHING MORE THAN PROLONG AN INHUMANE, PAINFUL DEATH.

Medicine historically has intentionally endeavored to extend life. With advances in medical care and technology, life expectancy has been extended. The challenge is to know when advances in medical care and technology are beneficial to a person and when they are not. Prolonging inhumane, painful dying clearly is an abuse. It violates one of the basic facts of the Hippocratic Oath of a physician to "first do no harm."

The present case presents an issue of first impression concerning life-prolonging treatments in a terminal patient. The patient, Ruben Betancourt, has been in a permanent vegetative state for nearly a year-and-a-half. He is unresponsive, and his physicians maintain that there is no chance for improvement or recovery; rather, he will continue to deteriorate while his bodily functions are maintained by mechanical means. Mr. Betancourt is dying.

New Jersey Courts have previously addressed the related issue of a family's desire to terminate support when the

patient is in a persistent vegetative state. This case presents the converse, where the hospital, after an appropriate review by its Prognosis Committee, has determined that continuing mechanical services is inhumane, below the prevailing standard of care, and will only serve to extend the length of biologic life rather than promote its dignity. Citing to prior precedent, the Trial Court concluded that family desire controls in these situations. However, it remains the hospital's and its independent physicians' position that while a family's input is important, medical decision making in these circumstances must be taken into account with uniform standards set for the withdrawal of inappropriate treatment when it is below the standard of care and would only serve to prolong eventual and certain death.

New Jersey Courts first addressed the standards for discontinuance of extraordinary procedures for life-sustaining treatment in In re Quinlan, 76 N.J. 10 (1976). Quinlan involved a father's quest for guardianship in an effort to withhold life-sustaining treatment for his incompetent daughter. 70 N.J. at 29-30. In this seminal and oft-cited decision, the New Jersey Supreme Court conferred the right of termination to a surrogate in the circumstances presented. Id. at 55.

Approximately ten years later, the Court confronted a similar situation involving a nursing home patient. See In re

Conroy, 98 N.J. 321 (1985). Different from Quinlan, the incompetent patient in Conroy was not in a persistent vegetative state but had severely limited mental and physical functioning. The Conroy Court was particularly concerned with the special vulnerability of mentally and physically impaired individuals in nursing homes, as well as the potential for abuse by unsupervised institutional decision making. Again, the Court authorized surrogate decision making in accordance with certain rules. The Court enunciated three tests that a guardian must utilize to implement a patient's wishes: the subjective test, a limited-objective test, or a pure-objective test. 98 N.J. at 384, 360, 365-66.

Three more cases followed. In re Peter, 108 N.J. 335 (1987), In re Farrell, 108 N.J. 365 (1987), and In re Jobes, 108 N.J. 394 (1987). Farrell involved an application for appointment as guardian by a husband for purposes of removing his competent wife from a respirator. Peter involved the application for an appointment of a guardian of a close friend who was designated to make surrogate medical decisions for the incompetent patient. Neither case involved the issues presented in this matter.

Jobes involved a husband seeking to remove life-sustaining nutrition from his comatose wife. 108 N.J. at 402. Again, the New Jersey Supreme Court authorized a surrogate

decision maker to refuse life-sustaining treatment. The Court required, however, that this surrogate require statements from at least two independent physicians that the patient is in a persistent vegetative state and there was no possibility that the patient will recover. Id. at 424-428.

While these cases are certainly instructive and provide guidance applicable to the individual circumstances presented, they are not applicable to the present matter now before this Court. The matter before this Court is not whether treatment should be withheld or withdrawn from a patient. Rather, the issue is whether physicians are compelled to provide futile medical care to a patient when they believe such treatment is not only against the standard of care, but is ~~inhumane~~ when death is imminent. This is a topic which has received considerable debate within the medical community.

By way of example, the New Jersey Department of Health and Senior Services has issued a policy statement for the withholding or withdrawal of life-sustaining medical treatment. (31a). Likewise, the Renal Physicians Association and American Society of Nephrology have issued a clinical practice guideline suggesting that in "Patients who have irreversible, profound neurological impairment such that they lack signs of thought, sensation, purposeful behavior, and awareness of self

environment" it may be appropriate to withhold or withdraw dialysis. (32a at 33).

Further, evolving legal theory supports physician choice with respect to abiding by the standard of care. In Causey v. St. Francis Medical Center, 719 So.2d 1072 (La. App. 2d. Cir. 1998), a patient's family brought an intentional battery-based tort action against the hospital and the physician who withdrew life-sustaining care to a 31-year-old comatose quadriplegic with end-stage renal failure, over the strong objections of the patient's family. In that case, the patient's treating physician believed that continuing dialysis would have no benefit. Despite this, the patient's family demanded aggressive, life-sustaining care. Id. at 1073. Dialysis was discontinued, the ventilator was removed, and, subsequently, the patient died of respiratory and cardiac failure. Id. at 1074.

The Causey Court, citing In re Quinlan, 70 N.J. 10 (1976), emphasized that a patient's participation in medical decision making is a well-established right. Thus, where a patient is incompetent, decision making typically falls on the guardian or on the next of kin. Nevertheless, "The Court, as the protector of incompetents, however, can override an intolerable choice by a surrogate decision maker." Id.

In Causey, as in the present case, the family desired certain medical treatment rendered, and the physicians believed.

that such treatment was futile and below the standard of care. The Court recognized that where a medical professional and a patient, through a surrogate, disagree on the worth of pursuing life, there is inherent conflict over values. Id. at 1074-5. The Court recognized that "futility is a subjective and nebulous concept which, except in the strictest physiological sense, incorporates value judgments." Id. at 1075. Thus, the Court instead emphasized the importance of acknowledging the standard of medical care in a particular case. Id. In doing so, the Court recognized that:

Physicians are professionals and occupy a special place in our community. They are licensed by society to perform this special role. No one else is permitted to use life-prolonging technology which is considered by many as 'fundamental' healthcare. The physician has an obligation to present all medically acceptable treatment options for the patient or her surrogate to consider and either chose or reject; however, this does not compel a physician to provide interventions that in his view would be harmful, without effect, or 'medically inappropriate.'

Id. at 1075 (emphasis supplied).

The Causey Court ultimately concluded that "a finding that the treatment is medically inappropriate by a consensus of physicians practicing in that specialty translates into a standard of care." Therefore, the Court found in favor of the defendant hospital and physician.

Here, the unambiguous and un-rebutted testimony is that the patient remained in a permanent vegetative state with no chance of recovery. He was terminal. The various physicians, many of whom were on the Prognosis Committee and who treat the patient, all agree that continuing dialysis on the patient is not only against the standard of care but is medically and ethically inappropriate. As set forth by the Causey Court, physicians should not be compelled to provide medical treatment which they believe is medically inappropriate or futile.

The American Medical Association Counsel on Ethical and Judicial Affairs (the "Counsel") agrees that the definition of "futility" inherently involves a value judgment. The Council's Report on Medical Futility and End-of-Life Care (the "Report") expresses the Council's preference for the due process approach for determining whether to withhold or withdraw what is felt to be futile care. The Report recommends that earnest attempts to have joint decision making between the patient or proxy and the hospital be made. Where this does not resolve a dispute, an institutional committee, such as an ethics committee, should meet to attempt to resolve these issues. Where the patient (or the surrogate decision maker) continues to disagree, transfer of the patient to another facility should be

Here, there were multiple meetings between the physicians and the patient's family to attempt to resolve the disagreements related to the patient's care. The family has refused to allow a DNR order to be placed, requiring the hospital to utilize useless resuscitative efforts. There was a Prognosis Committee meeting that determined that continued care would be futile. Attempts to transfer the patient have been unsuccessful as no other facility has been willing or able to accept the transfer.

There is no dispute that this is a thorny issue that requires judicial guidance. However, this Court has held that a Court may not order health care professionals to pursue a course which they believe is inappropriate or unsafe or against their own professional practices and ethics. See Couch v. Visiting Home Care Services, 329 N.J. Super. 47, 53 (App. Div. 2000). That is precisely what the Trial Court did in this circumstance. It compelled Trinitas Hospital and its affiliated physicians to provide dialysis, ventilator and nutritional support to a patient who is dying. This support, while it may prolong the dying process, will not result in improvement. Further, the patient's quality of life will only continue to deteriorate. Mr. Betancourt is covered in decubitus ulcers, many of which extend to the bone and are infected. His nutritional status cannot improve to the point where the infections can be fought

off. In the end, the family will bear witness to continuing deterioration and decompensation if these services are continued.

Accordingly, it is respectfully requested that this Court enter an Order reversing the decision of the Trial Court and removing the Order compelling continued interventional services.

POINT II

THE TRIAL COURT IMPROPERLY APPOINTED
JACQUELINE BETANCOURT AS GUARDIAN FOR HER
FATHER, RUBEN BETANCOURT.

The Court's Order in this matter appointed Jacqueline Betancourt as the guardian for her father, Ruben Betancourt. This appointment was unsupported and presents an inherent conflict. First, the rules governing the appointment of a guardian, set forth in Rule 4:86-1, *et seq.* were not followed in this appointment. Secondly, and more importantly, upon information and belief, Ms. Betancourt intends to file a lawsuit against Trinitas Hospital for the event which caused the anoxic injury. Accordingly, she has a personal stake, premised upon secondary gain, to maintain her father alive. In such circumstances, an independent person, without financial motivation, should have been appointed as guardian.

The standards for a complaint seeking the appointment of a guardian are set forth in Rule 4:86-1. That Rule requires specificity of pleadings with respect to the guardian sought to be appointed and facts concerning the incompetent or incapacitated person. Even a cursory review of the Verified Complaint in this matter (1a) reflects a failure to comply with the governing rule. Paragraph 12 of the Complaint (3a) merely

asks the Court to appoint a guardian and does not specify Jacqueline Betancourt as the individual seeking guardianship.

Rule 4:86-2 requires that the Complaint have annexed thereto affidavits of two physicians. While there is no dispute that Mr. Betancourt remained in a permanent vegetative state, plaintiff did not come forward with two affidavits. Rather, plaintiff relied exclusively on the affidavit of Dr. Goldstein, a nephrologist, who during his testimony, could not comment upon the competency of the patient. His only opinion was that family wishes control with respect to the continuation of dialysis. Again, plaintiff failed to comply with the rules governing the appointment of a guardian.

These rules are designed to foster appropriate hearings concerning the appointment of a guardian for an incapacitated individual. While there is no doubt that Mr. Betancourt fits that definition, compliance with these rules must be strict in order to ensure the best interests of the incompetent. Here, it cannot be disputed that these rules were not complied with.

More importantly, the appointment of Jacqueline Betancourt as the guardian for her father presents an inherent and compelling conflict.

During her testimony, Jacqueline Betancourt testified:

The Witness: Yeah, basically my father is in the situation that he's in because of a hospital error, okay.

(3T:35-23 to 25). Upon information and belief, Ms. Betancourt, as well as other family members intend to file a lawsuit against the hospital for the incident which led to the anoxic injury. Plaintiff's current counsel, Mr. Martin, is a well known and experienced medical malpractice plaintiff's attorney.

No one disputes Jacqueline Betancourt's sincerity or love for her father. However, the potential for monetary gain in a situation like that presented here presents a conflict that requires disqualification of her serving as the guardian. Mr. Betancourt left no living will and identified no health care proxy. His wishes cannot be determined conclusively. Accordingly, under prior precedent, a surrogate decision maker has to be appointed from whom compelling testimony can be discerned with respect to Mr. Betancourt's wishes. Certainly, that testimony can be colored when there is secondary gain or monetary gain to be had by maintaining the patient alive for as long as possible. In situations like those presented here, the motives must be clear and unambiguous. Unfortunately, in this instance, they are not.

This Court is now confronted with a legal, moral, ethical and medical dilemma that requires careful thought and guidance. A decision from this Court will redound for decades


with respect to the procedures to be utilized in circumstances like those presented here, where maintenance of mechanical means can prolong dying but, according to physicians, is below the prevailing standard of care. In such circumstances, scrutiny of anyone seeking to be a guardian must be careful, close and unbiased. In view of the circumstances, there can be no confidence in this appointment.

Accordingly, it is respectfully requested that this Court enter an Order reversing the Trial Court's decision to appoint Jacqueline Betancourt as the guardian of her father.

CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court enter an Order reversing the decision of the Trial Court, removing Jacqueline Betancourt as guardian, and removing any prohibition from terminating inappropriate mechanical means of support for Ruben Betancourt.

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Date: May 28, 2009

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Building B, Suite 200
East Brunswick, NJ 08816
(732) 214-1800
(732) 214-0307 (FAX)
Attorney for Plaintiff

**JACQUELINE BETANCOURT, on
behalf of RUBEN BETANCOURT,**

Plaintiffs,

vs.

TRINITAS HOSPITAL,

Defendants.

**SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - UNION COUNTY
Docket No.**

Civil Action

VERIFIED COMPLAINT

Plaintiff, Jacqueline Betancourt, on behalf of her father, Ruben Betancourt, residing at 313 Christina Court, Elizabeth, New Jersey, complaining of the defendant, Trinitas Hospital, alleges and says:

1. Plaintiff's father, Ruben Betancourt is currently hospitalized at Trinitas Hospital in Elizabeth, New Jersey.
2. Ruben Betancourt has been a patient in the care of the defendant institution, its agents, servants and/or employees for an extended period of time.
3. At all relevant times herein, Ruben Betancourt has been and remains in an unconscious state unable to communicate with his physicians or family.
4. As a result of an incident that occurred following surgery, Ruben Betancourt was deprived of oxygen as a result of an extubation of a breathing tube .
5. As a consequence of the above described incident, Ruben Betancourt lapsed into

a unconsciousness and has not regained consciousness since the event. Ruben Betancourt remains unable to communicate with physicians, medical providers, or family.

6. Among other modalities of treatment, dialysis, ventilation and/or respiration have been provided via mechanical means.

7. Representatives of the defendant, Trinitas Hospital, have recently advised that plaintiff and other members of the Betancourt family, including Ruben Betancourt's spouse, Maria Betancourt, of its intention to discontinue manual/mechanical life support treatment. The defendant, through its representatives, have advised the Betancourt family that they believe that once the aforesaid treatment is discontinued, Ruben Betancourt will succumb and expire as a result of his overall medical condition.

8. Representatives of the defendant have advised the undersigned and the Betancourt family that they believe that Ruben Betancourt's condition is such that he is in an unresponsive irreversible vegetative state and that further treatment would be futile.

9. The undersigned and other members of the Betancourt family have been in constant contact with Ruben Betancourt and visit him daily. The undersigned and other members of the Betancourt family as set out in Affidavits that will be attached to the Verified Complaint, can and will testify that Ruben Betancourt is responsive to certain stimulus. His physical reactions have been described by his medical providers as autonomic movement. Based upon the undersigned observation and the observations of other members of the Betancourt family, it is my position that my father does in fact respond to the sound of certain voices, to certain other stimuli from family and others. My father does respond and recoil when approached from certain medical providers and in anticipation of certain medical treatments. His responses are clearly not uncontrolled or reflex. They are a direct response to certain

stimulus.

10. As of this writing, the undersigned has been unable to retain the services of another physician, outside the Trinitas Hospital system, to exam my father. I am actively seeking such a physician and when and if possible, I will supply his certification or affidavit.

11. It is my belief and the belief of my mother and brother that my father, given a choice, would resist termination of life support and chose to live.

12. I would ask that the court appoint a guardian or guardians to attempt to determine what my father's wishes would be and make a recommendation of a course of action to the court, so as to base the ultimate decision on an objective recommendation as opposed to the unilateral determination of the hospital.

13. This Verified Complaint is being filed in an effort to obtain an Order of the Court restraining the defendant from discontinuing the aforesaid treatment and/or modalities and should continue to administer such care and treatment as is necessary to sustain my father, Ruben Betancourt.

WHEREFORE, plaintiff demands that the defendant, Trinitas Hospital, be required to continue all available treatment and/or care necessary to sustain its patient, plaintiff's father Ruben Betancourt.

MARTIN KANE & KUPER, LLC
Attorneys for Plaintiffs,
Jacqueline Betancourt, on behalf of Ruben Betancourt

By: 

JAMES D. MARTIN, ESQ.

DATED: January 21, 2009

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of *Rule 4:25-4* the Court is advised that JAMES D. MARTIN, ESQ. is designated as trial counsel.

RULE 4:5-1 CERTIFICATION

Pursuant to *Rule 4:5-1*, I hereby certify to the best of my knowledge, that the above-captioned action is not the subject of any other action pending in any court or the subject of a pending arbitration proceeding. No other action or arbitration proceeding is contemplated at this time.

MARTIN KANE & KUPER, LLC
Attorneys for Plaintiff
Jacqueline Betancourt, on behalf of Ruben Betancourt

By: JAMES D. MARTIN, ESQ.

Dated: January 21, 2009

VERIFICATION

1. I am the Plaintiff named in the foregoing Verified Complaint.
2. The allegations in the Complaint are true to the best of my knowledge and belief and with respect to those matters that are alleged upon information and belief, I believe them to be true.
3. I certify that the above statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

Dated: January _____, 2009

JACQUELINE BETANCOURT

MARTIN KANE & KUPER

180 Tices Lane
Building B, Suite 200
East Brunswick, NJ 08816
(732) 214-1800
(732) 214-0307 (FAX)
Attorney for Plaintiffs

JACQUELINE BETANCOURT, on
behalf of RUBEN BETANCOURT,

Plaintiffs,

vs.

TRINITAS HOSPITAL,

Defendants.

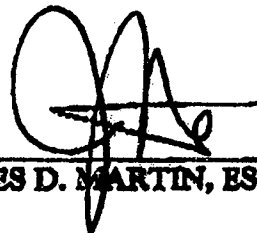
SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - UNION COUNTY
Docket No. UNN-C-12-09

Civil Action

**CERTIFICATION OF
FACSIMILE SIGNATURE**

I, James D. Martin, Esq. Of full age, certify as follows:

The attached Affidavit of Carl S. Goldstein, M.D. contains a facsimile of the original signature of Dr. Goldstein. I acknowledge the genuineness of the signature, and that the Affidavit with the original signature affixed will be filed if requested by the Court or a party.



JAMES D. MARTIN, ESQ.

January 30, 2009

MARTIN KANE & KUPER

180 Tices Lane
Building B, Suite 200
East Brunswick, NJ 08816
(732) 214-1810
(732) 214-0317 (FAX)
Attorney for Plaintiffs

**JACQUELINE BETANCOURT, on
behalf of RUBEN BETANCOURT,**

Plaintiffs,

vs.

TRINITAS HOSPITAL,

Defendants.

**SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - UNION COUNTY
Docket No. UNN-C-12-09**

Civil Action

**AFFIDAVIT OF
CARL S. GOLDSTEIN, M.D.**

The undersigned, Carl S. Goldstein, M.D., of full age, being duly sworn according to law,

upon my oath, deposes and says:

1. I am a medical doctor; licensed in the State of New Jersey, since October 1, 1980.
2. I am Board Certified in the field of Nephrology, and have particular expertise in the area of renal disease, renal failure and dialysis.
3. I have no financial interest in the outcome of this action.
4. I do not know the parties nor have I treated Mr. Ruben Betancourt.
5. I have had no prior dealings with the firm of Martin, Kane & Kuper or attorneys James D. Martin or Todd Drayton.
6. I was contacted by Mr. Martin and asked to review a hospital chart for a patient, Ruben Betancourt.
7. I reviewed a Trinitas Hospital chart, with an admission date of July 2008 continuing through January 2009.

8. Based upon my review of the medical chart, I can state, within medical probability, the following:

Patient Ruben Betancourt suffers from end stage renal disease.

Regular hemodialysis treatments are the standard of care for that condition.

The hemodialysis treatments that have been provided at Trinitas Hospital to date have been provided within the standard of care.

The hemodialysis treatments that have been and are being administered are neither harmful nor dangerous to the patient.

My review of the patient's medical record demonstrates that he has tolerated the hemodialysis treatments without complication.

My review of the plan of care outlined by the patient's nephrologist demonstrates that the plan is within the standard of care.

The foregoing conclusions and/or assertions are supported by the medical record.

I hereby certify that the foregoing statements made by me are true. I am aware that if any

of the foregoing statements are willfully false, I am subject to punishment.

Carl S. Goldstein

CARL S. GOLDSTEIN, M.D.

Sworn and subscribed to before me

this 30th day of JANUARY, 2009

Theresa G. Dyer

NOTARY

Theresa G. DYER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 13, 2013

MARTIN KANE & KUPER

180 Tices Lane
Building B, Suite 200
East Brunswick, NJ 08816
(732) 214-1800
(732) 214-0307 (FAX)
Attorney for Plaintiffs

FILED

JAN 23 2009

**JOHN F. MALONE
J.S.C.**

JACQUELINE BETANCOURT, on
behalf of RUBEN BETANCOURT,

Plaintiffs,

vs.

TRINITAS HOSPITAL,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - UNION COUNTY
Docket No. UNN-C-12-09

Civil Action

ORDER

THIS MATTER being brought before the Court by James D. Martin, Esq., attorney for plaintiffs, Jacqueline Betancourt, on behalf of Ruben Betancourt, seeking relief by way of temporary restraints pursuant to R. 4:52, based upon the facts set forth in the Verified Complaint; and it appearing that immediate and irreparable damage will probably result before notice can be given and a hearing held and for good cause shown.


It is on this 23 day of JAN, 2009,

ORDERED that plaintiffs' application is hereby granted; and that

1. Defendant, Trinitas Hospital and/or its agents, servants and/or employees shall be temporarily restrained from discontinuing or suspending any treatment, including dialyses heretofore administered to the patient, Ruben Betancourt; and that
2. Defendant, Trinitas Hospital and/or its agents, servants and/or employees shall immediately re-establish and/or resume treatment, including dialysis, to patient Ruben Betancourt; and that
3. Defendant, Trinitas Hospital and/or its agents, servants and/or employees shall

remove a Do Not Resuscitate (DNR) order from the plaintiff's chart; and that

- 4. Defendant, Trinitas Hospital and/or its agents, servants and/or employees shall immediately make copies of the patient, Ruben Betancourt's records available to plaintiffs' counsel; and that
- 5. On or before Friday, January 30, 2009 plaintiffs shall provide the Court and defense counsel with a medical certification stating that:
 - A. Treatment, including dialyses treatment, to the patient, Ruben Betancourt is appropriate;
 - B. That said treatment is not harmful;
 - C. That the administration of said treatment is within the standard of care; and that
- 6. A hearing in this matter shall be conducted before the Honorable John F. Malone, J.S.C. on January 30, 2009 at 2:00 p.m.; and that
- 7. A true and complete copy of this Order be served upon all counsel within seven (7) days of the date hereof.


 _____ J.S.C.
JOHN F. MALONE, J.S.C.

Opposed

Unopposed

GARFUNKEL, WILD & TRAVIS, P.C.

Continental Plaza II

411 Hackensack Avenue, 5th Floor

Hackensack, New Jersey 07601

(201) 883-1030

Attorneys for Defendant Trinitas Regional Medical Center

JACQUELINE BETANCOURT, on behalf of
RUBEN BETANCOURT

Plaintiff,

vs.

TRINITAS REGIONAL MEDICAL CENTER

Defendant.

----- X SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION
: UNION COUNTY
:

: Docket No. C-12-09
:

: CERTIFICATION OF ARTHUR
: MILLMAN, M.D.
:

----- X

I, Arthur Millman, M.D., of full age, certify as follows:

1. This certification is made by me in support of Trinitas Regional Medical Center's ("Trinitas") opposition to Plaintiff's request for a temporary injunction, by which she seeks to force Trinitas to provide Ruben Betancourt (the "Patient") with inhumane and futile medical treatment that, at this time, would be medically inappropriate and against the standards of medical care and professional judgment.

2. I am a permanent resident in the State of New Jersey. I am a physician licensed to practice medicine in the State of New Jersey. I currently maintain an office at 240 Williamson Street, Elizabeth, New Jersey, 07207. I was first licensed to practice medicine in 1969 and received my New Jersey State license in 1976.

3. I hold the Doctor of Medicine degree from the Albert Einstein College of Medicine of Yeshiva University, located in Bronx, New York. I received my degree in 1969.

4. I completed two residencies. I did my first residency at Mount Sinai Medical Center from 1969 to 1972, specializing in internal medicine. I did my second residency at Mount Sinai Medical Center from 1974 to 1976, specializing cardiovascular disease.

5. I have been practicing medicine for nearly forty (40) years and specialize in internal medicine and cardiovascular disease.

6. As the attending physician assigned to the Patient's case, I am familiar with the Patient, his prognosis, his diagnoses, and with the details of and circumstances surrounding his care.

7. I make this certification in lieu of affidavit pursuant to R. 1:4-4 in regard to the above captioned matter.

Patient's Medical History

8. The Patient is a 73 year old male. Subsequent to surgery for a malignant thymoma on January 22, 2008, the Patient developed anoxic encephalopathy. The lack of oxygen to the Patient's brain left him unresponsive.

9. Since that time, the Patient has been admitted to various treatment facilities, including the JFK Medical Center's Brain Trauma Unit, in Edison, New Jersey; the Genesis Health Care's Ventilation Unit, in Westfield, New Jersey; and the Elizabeth Nursing Home, in Elizabeth, New Jersey.

10. The Patient's condition is terminal.

11. On July 3, 2008, the Patient was readmitted to Trinitas, with a diagnosis of renal failure. Since this readmission, the Patient has remained at Trinitas. At the time of his readmission, the Patient was unresponsive and he has remained in a persistent vegetative state since his readmission.

Patient's Current Medical State

12. Currently, the Patient is on an artificial ventilator.

13. The Patient is entirely unresponsive. Any eye movements made are reflexive.

The Patient has no ability to communicate and does respond to pain.

Diagnosis and Prognosis

14. The Patient is in a persistent vegetative state.

15. The Patient body is currently decomposing, and the Patient is actively dying.

16. The Patient is often septic and has ulcers on his bones due to osteomyelitis (a serious and chronic bone infection).

17. Based upon my nearly forty years (40) experience as a medical doctor, specializing in internal medicine and cardiovascular disease, the Patient will never recover from this persistent vegetative state.

18. Even with dialysis, I would not expect the Patient to live more than a few months due to his condition.

Informing the Patient's Family

19. Beginning several months ago, the Patient's family was informed by Trinitas's medical staff that the Patient remained in a persistent vegetative state and that no clinical probability existed that the Patient would ever return to a cognizant state.

20. It is my medical opinion that to continue dialysis treatments of the Patient is futile, inhumane and contrary to generally accepted standards of medical care, as well as my own professional judgment.

[Remainder of Page Intentionally Left Blank]

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfull / false, I am subject to punishment.



Arthur Milligan, M.D.

Dated: 1/22 2009

11215049.3

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GARFUNKEL, WILD & TRAVIS, P.C.

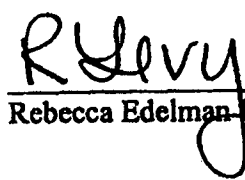
Continental Plaza II
411 Hackensack Avenue, 5th Floor
Hackensack, New Jersey 07601
(201) 883-1030

Attorneys for Defendant Trinitas Regional Medical Center

----- x	
JACQUELINE BETANCOURT, on behalf of	: SUPERIOR COURT OF NEW JERSEY
RUBEN BETANCOURT	: CHANCERY DIVISION
	: UNION COUNTY
	: .
Plaintiff,	: .
	: Docket No.
vs.	: .
TRINITAS REGIONAL MEDICAL CENTER	: .
	: <u>CERTIFICATION OF FACSIMILE</u>
Defendant.	: <u>SIGNATURE</u>
	: .
	: .
----- x	

I, Rebecca Edelman Levy, Esq., of full age, certify as follows:

The attached Certification of Arthur Millman, M.D. in Support of Trinitas Regional Medical Center's Opposition to Plaintiff's request for temporary injunctive relief contains a facsimile of the original signature of Dr. Millman. I acknowledge the genuineness of the signature, and that the Certification with the original signature affixed will be filed if requested by the Court or a party.



Rebecca Edelman Levy, Esq.

Dated: January 22, 2009

GARFUNKEL, WILD & TRAVIS, P.C.

Continental Plaza II
411 Hackensack Avenue, 5th Floor
Hackensack, New Jersey 07601
(201) 883-1030

Attorneys for Defendant Trinitas Regional Medical Center

JACQUELINE BETANCOURT, on behalf of
RUBEN BETANCOURT

Plaintiff,

vs.

TRINITAS REGIONAL MEDICAL CENTER

Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
UNION COUNTY

Docket No.

CERTIFICATION OF BERNARD
SCHANZER, M.D.

I, Bernard Schanzer, M.D., of full age, certify as follows:

1. This certification is made by me in support of Trinitas Regional Medical Center's ("Trinitas") opposition to Plaintiff's request for a temporary injunction, by which she seeks to force Trinitas to provide Ruben Betancourt (the "patient") with inhumane and futile medical treatment that, at this time, would be medically inappropriate and against the standards of medical care and professional judgment.

2. I am a permanent resident in the State of New Jersey. I am a physician licensed to practice medicine in the State of New Jersey. I currently maintain an office at 700 N. Broad St. Elizabeth, NJ 07208. I was first licensed to practice medicine in 1962 and received my New Jersey State license in 1969.

3. I hold the Doctor of Medicine degree from the University Libre De Bruxelles, Fac De Med Et De Pharm, located in Brussels, Belgium. I received my degree in 1962.

4. I completed two residencies. I completed my first residency at Maimonides Medical Center, Brooklyn, New York, in 1965, specializing in internal medicine. I began my second residency at the Bronx Municipal Hospital Center in 1966, specializing in neurology. I completed this second residency in 1969, after a two year hiatus in the United States Air Force.

5. I have been practicing medicine for forty (40) years and specialize in neurology.

6. As a consulting neurologist assigned to the patient's case, I am familiar with the patient, his prognosis, his diagnoses, and with the details of and circumstances surrounding his care.

7. I make this certification in lieu of affidavit pursuant to R. 1:4-4 in regard to the above captioned matter.

Patient's Current Medical State

8. Currently, the patient is on an artificial ventilator.

9. Although the patient will open his eyes at times and spontaneous eye movement exists, no eye contact is present.

10. Occasionally, the patient demonstrates sucking mouth movements. However, no spontaneous movements of the extremities exist. Likewise, deep tendon reflexes are absent.

11. The patient does not respond to pain.

Diagnosis and Prognosis

12. The patient is in a chronic and persistent vegetative state.