

GARFUNKEL, WILD & TRAVIS, P.C.

ATTORNEYS AT LAW

411 HACKENSACK AVENUE • HACKENSACK, NEW JERSEY 07601
TEL (201) 883-1030 • FAX (201) 883-1031

ROBERT ANDREW WILD *
FREDRICK I. MILLER *
JUDITH A. EISEN *
LEONARD M. ROSENBERG *
JEFFREY S. BROWN **†
ANDREW E. BLUSTEIN **†
BURTON S. WESTON *
DAVID J. BIEHL *
MICHAEL J. KEANE **
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GREG E. BLOOM **
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JEFFRY ADEST **
SUZANNE M. AVENA *
STEVEN J. CHANANIE *
PHILIP C. CHRONAKIS **
PETER ARMSTRONG EGAN **
B. SCOTT HIGGINS *
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TERENCE A. RUSSO *
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DEBRA A. SILVERMAN *
CHRISTINA VAN VORT *
ANDREW L. ZWERLING *

OF COUNSEL
GEORGE M. GARFUNKEL *
NORTON L. TRAVIS *
DAVID E. STECKLER *
STUART M. HOCHRON, M.D. †

DANIEL ALLIANCE *
MICHAEL M. BARUCH *
JOHN BECKER *
GRANT CARTWRIGHT **
WILHELMINA A. DE HARDER *
ROBERT A. DEL GIORNO *
LUCIA F. DENG *
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THEREBA A. EHLE **
JACQUELINE H. FINNEGAN *
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DANIEL MEIER **
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GREGORY R. SMITH *
COLLEEN M. TARPEY *
JUSTIN M. VOGEL *
CAROLINE P. WALLITT *
ALICIA M. WILSON *

SENIOR ATTORNEYS
LARA JEAN ANCONA *
KEVIN G. DONOGHUE *
LAURIE BORGERDING JOHNSON *
BARBARA D. KNOTHE **
JOHN P. KRALJIC *
MARIANNE MONROY **
KAREN L. RODGERS *
ROBERT E. SCHILLER *
APSHREEN A. SHAH *

FILE NO.: 70236.0081
REPLY TO: New Jersey

WRITER'S EMAIL: rlevy@gwtlaw.com
WRITER'S DIRECT DIAL: (201) 883-1030

* LICENSED IN NEW YORK
† LICENSED IN NEW JERSEY
LICENSED IN CONNECTICUT
† RESPONSIBLE PARTNERS FOR
NEW JERSEY OFFICE

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March 16, 2009

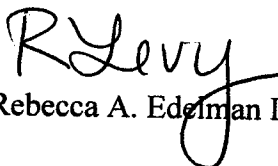
Michael J. Keating, Esq.
Dughi & Hewit
340 North Avenue
Cranford, New Jersey 07016

**Re: Betancourt v. Trinitas Hospital
Docket No. UNN-C 12-09**

Dear Mr. Keating:

Enclosed please find transcripts of the Order to Show Cause Hearings held on January 22, February 17, and February 23, 2009, in this matter.

Very truly yours,

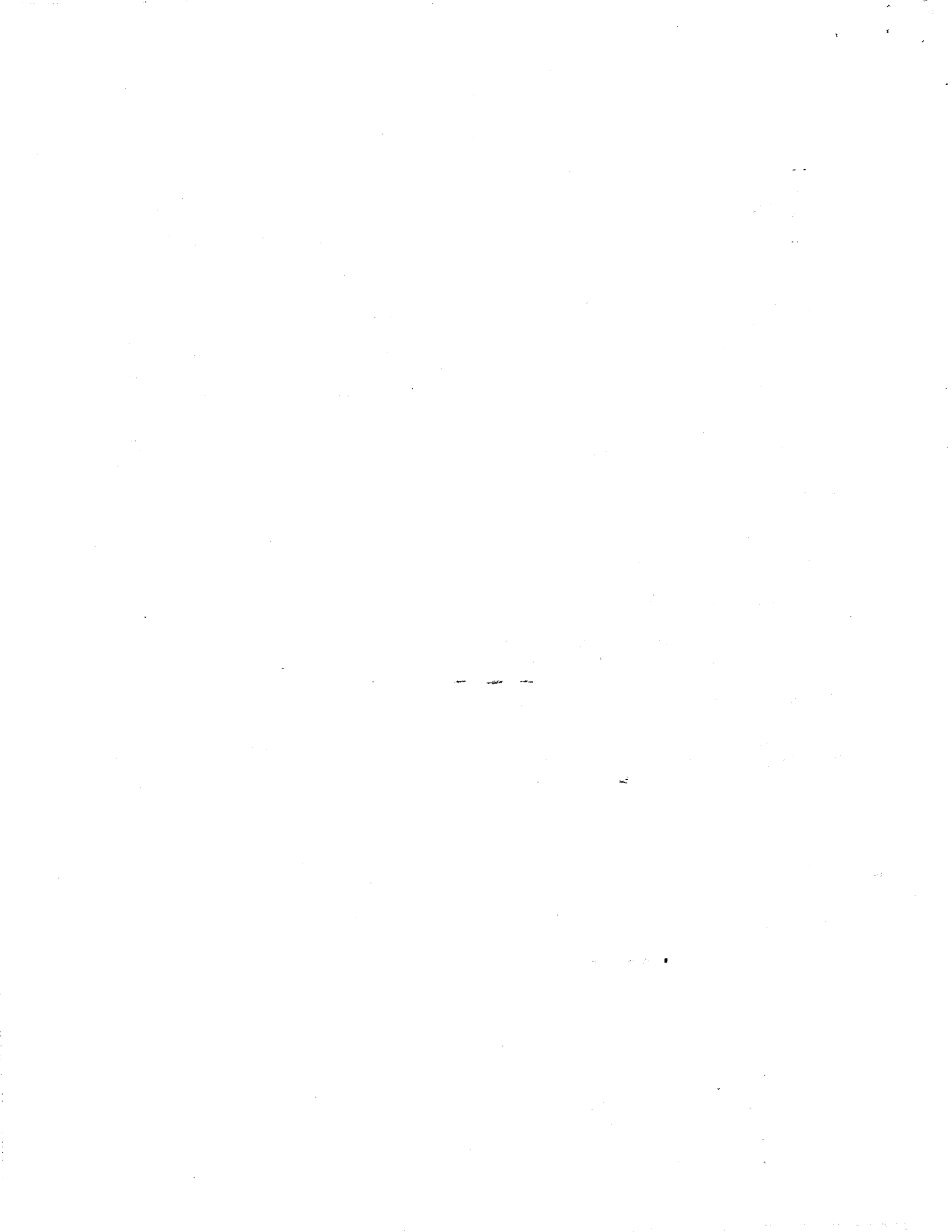

Rebecca A. Edelman Levy

RAL:jed
Enclosures
cc: Sam Germana, Esq. (Via First Class Mail)(enclosures)

NEW YORK

NEW JERSEY

CONNECTICUT



SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
GENERAL EQUITY PART
UNION COUNTY, NEW JERSEY
DOCKET NO. UNN-C-12-09

BETANCOURT)

Plaintiff)

vs.)

TRINITAS HOSPITAL)

Defendant)

TRANSCRIPT

OF

ORDER TO SHOW CAUSE

HEARING

Place: Union County Courthouse
Two Broad Street
Elizabeth, New Jersey 07207

Date: January 22, 2009

BEFORE THE HONORABLE JOHN MALONE, J.S.C.

TRANSCRIPT ORDERED BY:

REBECCA A. EDELMAN LEVY, ESQ. (Garfunkel Wild & Travis)

APPEARANCES:

JAMES MARTIN, ESQ. AND TODD DRAYTON, ESQ.
Attorneys for the Plaintiffs, Betancourt Family

PHIL CHRONAKIS, ESQ. AND REBECCA A. EDELMAN LEVY,
ESQ. (Garfunkel Wild & Travis)
Attorneys for the Defendant, Trinitas Hospital

A

LYNN COHEN-MOORE
AUTOMATED TRANSCRIPTION SERVICES

P.O. Box 2230

Laurel Springs, New Jersey

(856) 784-4276

I N D E X

January 22, 2009

ARGUMENT

By: Mr. Martin 4,9,18
By: Mr. Chronakis 6,11,20
By: Ms. Levy 14

THE COURT

PAGE

Decision 22

1 THE COURT: This is the matter of Betancourt
2 v. Trinitas Hospital. The Docket is C-12-09.

3 Counsels, may I have your appearance for the
4 record, please. We'll start here to my right.

5 MR. MARTIN: Good afternoon, Judge. James
6 Martin and Todd Drayton on behalf of the Betancourts.

7 THE COURT: Uh hum.

8 MR. DRAYDEN: Good afternoon, Your Honor.

9 THE COURT: Uh hum.

10 MR. CHRONAKIS: Good afternoon, Your Honor.
11 Phil Chronakis and Rebecca Levy from Garfunkel Wild &
12 Travis on behalf of Trinitas Hospital.

13 THE COURT: All right, this is an application
14 for a temporary restraining order in connection with
15 this matter, brought the plaintiff, a daughter of
16 Reuben Betancourt who is a patient at Trinitas
17 Hospital.

18 The plaintiff seeks in this temporary
19 restraining -- in this Order To Show Cause that the
20 court enter an order that would require the hospital to
21 show cause why it should not be enjoined from
22 terminating or discontinuing treatment for Mr.
23 Betancourt, also seeks the appointment of a
24 guardian.

25 And the purpose of today's order is to

1 consider the plaintiff's application that pending
2 further proceedings in connection with this matter, --
3 that the court enter a temporary restraining order.
4 That temporary restraining order would restrain the
5 hospital from terminating or discontinuing life support
6 treatment for Mr. Betancourt.

7 I guess the first question that I have, Mr.
8 Martin is what is Mr. Betancourt's current condition
9 and what treatment is he receiving?

10 MR. MARTIN: Judge, I have to tell you that I
11 have been involved in this matter now for all of three
12 days or so. So I have no medical records, nor do I
13 have much medical information --

14 THE COURT: That was another concern I was
15 going to express, but I just wanted to know what you,
16 what you did know now.

17 MR. MARTIN: My understanding in speaking
18 with the family that as a consequence of a, -- one year
19 ago today, coincidentally, Mr. Betancourt had surgery
20 at Trinitas Hospital.

21 As a consequence of that surgery, something
22 occurred in recovery where he was, needed oxygen for
23 some period of time, lapsed into a coma, and my
24 understanding is that he has not responded or come out
25 of that as yet.

1 How this fits in sequentially, I don't know,
2 but he's also experienced renal failure.

3 So he is currently on a ventilator as I
4 understand it and also receiving dialysis treatment for
5 the, with the ventilator.

6 The family understands in speaking fairly and
7 formally with one or more of the doctors that the
8 intention of the hospital was to discontinue the
9 dialysis.

10 My understanding medically is the consequence
11 of that is that gentleman's potassium level will
12 increase. Eventually his kidneys will shut
13 down, leading to multi-organ system failure and
14 ultimately death.

15 THE COURT: Uh hum.

16 MR. MARTIN: We are here today to ask that
17 the hospital be restrained from taking that action
18 until such time as we could have a hearing.

19 I was informed this afternoon that that
20 action has already been taken.

21 So I guess I need to amend my petition and
22 ask the court if it views us favorably, to order the
23 hospital to re-institute that treatment which he should
24 have received today and was denied.

25 THE COURT: Uh hum.

1 MR. MARTIN: Again, my understanding is that
2 the proposed action is to discontinue and not re-
3 institute any of the dialysis treatments.

4 THE COURT: Okay.

5 I think perhaps I'm not sure what's your view
6 on behalf of the hospital. Is that, -- Mr. Martin's
7 understanding accurate as to the current treatment?
8 Has treatment and/or dialysis or ventilator been
9 discontinued? Is that the situation at the
10 moment?

11 MR. CHRONAKIS: Judge, Mr. Martin is
12 accurate up until Tuesday, and he's aware that there's
13 been a change since then.

14 As of Tuesday, the hospital discontinued Mr.
15 Betancourt's dialysis which additionally involved the
16 removal of essentially of a tube from a port, the
17 reinsertion of which would require a surgical procedure
18 to continue the dialysis treatment.

19 But so that the court's aware importantly
20 and had Mr. Betancourt's dialysis continued from
21 Tuesday, his next treatment so to speak would have been
22 today.

23 So essentially over the last two days, Mr.
24 Betancourt has not, not received any dialysis treatment
25 that he otherwise would have, but the hospital has

1 taken the step based on the judgment of the physicians
2 treating Mr. Betancourt to remove the port and to
3 discontinue dialysis.

4 MR. MARTIN: Judge, may I res... --

5 THE COURT: And I've had the opportunity to
6 read the papers that were submitted by both sides, and
7 I do understand that Trinitas is taking -- it is their
8 position of the medical staff at Trinitas that the, any
9 further treatment is not warranted in Mr. Betancourt's
10 case, that the continuation of treatment, given his
11 medical condition, his status, would be futile.

12 And it is the hospital's staff position, the
13 treating physician, that any -- that the treatment is
14 simply medically inappropriate.

15 MR. CHRONAKIS: Judge, if I might.

16 And that's certainly essentially the
17 hospital's position except for this I think significant
18 point, especially with Mr. Betancourt's family here.

19 A lot of the staff at the hospital asked me
20 to make sure the court understood something which
21 doesn't really come through in the papers, which is it
22 is not the case that the physicians at Trinitas are
23 saying this is futile or this is unnecessary as much as
24 it is their belief, as much as they obviously want Mr.
25 Betancourt to improve if he could, and as I know the

1 family certainly does, it is their belief that
2 continuing dialysis and continuing other life support
3 treatment is actually harming Mr. Betancourt's body.
4 It is causing his dignity to suffer, to the extent that
5 the court would recognize a public interest in dignity
6 when death is inevitable.

7 It is their professional judgment that Mr.
8 Betancourt cannot improve from his current condition,
9 and we're addressing questions of quality of life, and
10 the judgment in medical practice.

11 So it is not a matter of saying this isn't
12 going to change the outcome. It is a very difficult
13 but unfortunate matter that Mr. Betancourt's body is
14 deteriorating and suffering and that continued life
15 support as counterintuitive as this might sound to the
16 court, is having at least an immediate harm on other
17 interests of Mr. Betancourt that the hospital and the
18 physicians are trained to address and are reluctant to
19 put it gently to continue that course of treatment over
20 their medical training and judgment.

21 THE COURT: Okay.

22 Mr. Martin, you did touch upon and that is,
23 and I appreciate the short period of time that you've
24 had to deal with the matter and not having in hand
25 medical records puts you at somewhat of a

1 disadvantage.

2 I guess a concern that I have, though, is the
3 application here is not supported by any medical
4 certifications. It is supported by a family member who
5 is not a medical expert.

6 I can certainly understand the position being
7 taken by the family, but there is no supporting medical
8 evidence for this application.

9 MR. MARTIN: Judge, there's been little or no
10 opportunity to obtain -- Judge, all of the physicians
11 that have been involved in his care as I understand it
12 are staff physicians at Trinitas.

13 The family has identified at least one
14 physician who may be willing to intercede. He'd have
15 to, I guess I don't know the procedure, obtain
16 permission to come onto the Trinitas property because
17 he's not on staff there and he doesn't have
18 privileges.

19 But that's part of what we would like the
20 restraining order to allow us to accomplish.

21 I met these folks this afternoon so I've had
22 no prior contact with them but I did speak to an
23 attorney from the hospital yesterday who assured me
24 that no actions were going to be taken pending this
25 hearing.

1 I'm hearing now for the first time that
2 dialysis has, in fact, been stopped, and that in order
3 to re-institute it, there's some portal that has been
4 removed that requires surgical implantation.

5 My understanding was that was not going to be
6 done.

7 THE COURT: Uh hum.

8 MR. MARTIN: -- until we had an opportunity
9 to air our differences here.

10 Judge, as -- I mean I understand the -- I
11 haven't had a chance to digest these affidavits, but I
12 understand the position of the physicians. The court
13 needs to understand the position of the family.

14 They contend that--this gentleman, their
15 husband, their father, is indeed responsive.

16 He's not on and off with responses, that is
17 being suggested to the court, that he does respond to
18 certain stimuli.

19 They would like an opportunity for some
20 physician at the very least to come in and have the
21 opportunity to confirm that or refute it.

22 They also believe whether this is -- they
23 will suggest to Your Honor at a hearing that there may
24 be other motivations beyond this myth, frankly, some
25 economic motivation.

1 There is a sizable medical bill that remains
2 unpaid. They are not people of means, and they
3 question -- they question whether or not that's the
4 true motivation as opposed to some medical motivation
5 for the reactions that are being suggested.

6 That's something I would suppose we'll air in
7 a hearing, but all they're asking at this point, is
8 that necessary treatment not be suspended or terminated
9 until such time as we have an opportunity to get our
10 act together, if you will, to get a medical affidavit
11 if we can and prepare for, you know, where the
12 arguments of the hospital are.

13 But to leave this decision in the hands of
14 the hospital seems to me to be a terrible precedent for
15 this court or any other.

16 THE COURT: All right, thank you, sir.
17 Counsel.

18 MR. CHRONAKIS: Judge, just to address a
19 couple of things that Mr. Martin said and to clarify
20 the record.

21 No action was taken by the hospital
22 subsequent to the filing of the Betancourt's family's
23 papers which I understand came here in yesterday
24 morning or Tuesday night.

25 There was action taken early in the day

1 Tuesday at the hospital, and certainly not in response
2 to the prospect of a lawsuit, which I don't know the
3 hospital's aware of.

4 Judge, regarding the financial motivation, I
5 can assure you having represented Trinitas Hospital for
6 the last nine years at two law firms, that serving an
7 underserved population as Trinitas does here in
8 Elizabeth, there are many cases, countless cases, in
9 which Trinitas provides healthcare services regardless
10 of the financial outcome, and Your Honor must know
11 this.

12 And certainly in Mr. Betancourt's case,
13 that's no different.

14 You have affidavits from three physicians,
15 none of whom are addressing anything -- none of whom
16 would be allowed to as licensed professionals, address
17 anything that equates what the proper course of
18 treatment is with what the financial outcome to their
19 hospital is.

20 The motivation that these physicians have
21 from my dealings with them is that they uniformly
22 believe that Mr. Betancourt unfortunately will not
23 improve from his current position. And the
24 responsiveness to stimuli does not contradict that
25 fact, Judge.

1 There is medical evidence and it's addressed
2 in the certifications that certain patients have
3 limited reaction to stimuli, especially their eyes will
4 move in response to light. That has nothing to do with
5 the level of brain activity, the ability to be
6 conscious again. And as you're aware, Mr. Betancourt,
7 from reading the certifications, he doesn't respond to
8 pain or the more immediate stimuli.

9 So what we have here, Judge, as I indicated
10 earlier, is the situation in which unfortunately where
11 I can't, Ms. Levy can't, these good attorneys can't,
12 Mr. Betancourt's family unfortunately can't, you can't,
13 assess or even order that somebody's medical condition
14 be viewed as this or that.

15 Unfortunately for a number of months before
16 counsel came on the case, Mr. Betancourt's family was
17 given an opportunity to have another physician assess
18 his condition, but I don't know that this needs to
19 become a battle of the experts, so to speak, when you
20 have the un-contradicted, over a number of months, but
21 now before Your Honor, medical testimony.'

22 The only people who do know are saying that
23 this situation, unfortunately, is not going to improve
24 but it can get worse in terms of Mr. Betancourt's
25 dignity and his internal suffering if the court orders,

1 and Judge, I hope -- I know you're aware, but I want to
2 emphasize for the record, we don't have a situation
3 where Your Honor would be issuing a restraint against
4 the hospital's actions at this point.

5 Although some life support continues, it
6 would the situation in which Your Honor was issuing
7 affirmative injunction, and there is a line of
8 authority suggesting that a court should not substitute
9 it's own judgment over the judgment of medical
10 professionals on healthcare issues, that is, to force
11 them to follow a course of conduct that contradicts
12 their medical training and their medical ethics.

13 And I would, if the court would allow, Ms.
14 Levy could address more specific facts and regulations
15 and authority that the court might consider when
16 addressing this application.

17 THE COURT: Ms. Levy.

18 MS. LEVY: I think I also just want to
19 address a little bit more on the certifications.

20 There were four certifications submitted to
21 the court, one from a neurologist, one from a
22 nephrologist, one from the attending physician and also
23 one from the Medical Director of the hospital.

24 Each one of these people say the continued
25 treatment of this patient is medically and ethically

1 inappropriate. They say it is not within the standard
2 of care. In fact, two of the physicians go so far as
3 to categorize any continued treatment as inhumane.

4 You know, you saw the papers. The doctors
5 describe the patient's condition. It's not just being
6 on a vent. He is septic. He has ulcers on his bone.
7 This is not -- he's in very bad shape.

8 Unfortunately, there are not cases in New
9 Jersey that address the issue exactly on point that
10 deal with whether physicians should be required to
11 provide surgeries that are against their standard of
12 care.

13 There was a case, however, that I cited in
14 our papers in Louisiana. It was an Appellate Court,
15 court case, and actually it cites Quinn language which
16 we're all familiar with, a New Jersey case, and the
17 facts are actually very similar.

18 Although the patient there was only 31, the
19 patient was comatose with end stage renal failure.

20 And in that case, the physicians decided to
21 remove the dialysis and to take out the ventilator and
22 the patient passed away.

23 What followed was the court's review of what
24 happened, and in that case the court emphasizes the
25 importance of acknowledging the standard of care in

1 that particular case, and if I may I'd like to read
2 what the court held or what the court said.

3 The court said,

4 "Physicians are professionals and occupy a
5 special place in our community. They're licensed by
6 society to perform this special role. No one else is
7 permitted to use life prolonging technology which is
8 considered by many as fundamental health care.

9 The physician has an obligation to present
10 all medically acceptable treatment options for the
11 patient or her surrogate to consider and either choose
12 or reject.

13 However, this does not compel a physician to
14 provide intervention that in his view would be harmful
15 without affect or medically inappropriate."

16 We have four treating physicians here all who
17 say this treatment is medically inappropriate.

18 In addition, the American Medical Association
19 The Council on Ethical and Judicial Affairs did publish
20 a report entitled 'Medical Futility and End of Life
21 Care.' And this report discusses the complex issues in
22 dealing with futility.

23 In fact, I looked for a definition of
24 futility and it's quite hard to find because it's such
25 a value, based on values, and it's really impossible to

1 find a definition.

2 But what this report does is in an effort to
3 avoid judicial intervention, it talks about steps that
4 a hospital should take when these situations occur
5 where a family disagrees and is pushing medical
6 personnel to perform medical procedures that the
7 doctors believe is not within the standard of care.
8 And these steps include, and I would like to say that
9 Trinitas has done all the steps.

10 They've met with the family. They've
11 attempted to transfer to a facility where another
12 physician would care, care for this patient.

13 The problem is that, the physicians, and I
14 spoke to them, they find it very hard to believe that a
15 physician would take this case at this point. And the
16 family has had time to look for a transfer or another
17 physician.

18 They've had Ethics Committee meetings.
19 They've had other meetings with hospital personnel.

20 At the end of the report, it says, if you've
21 tried all these steps and there's still a conflict, it
22 says, and I quote, "the intervention will not be
23 offered." And that's, and that's where we're at right
24 now.

25 MR. MARTIN: Judge, with all due respect. I

1 don't know that group is, but who are they to make that
2 decision? And I, I mean I didn't come here to argue
3 the merits, but to just touch upon a response to
4 that.

5 Well let me start at the beginning.

6 First of all, in response to one of Phil's
7 comments, I didn't have this conversation with the
8 hospital lawyer yesterday as I was filing the papers.
9 I had it with her on Friday and Monday long before this
10 action was taken on Tuesday.

11 So the court shouldn't find itself in the
12 position now and have to order some affirmative act
13 that should have never been acted upon, the removal of
14 this port, et cetera.

15 I had a conversation with a gentleman, I want
16 to say his name was Samuel Germana, Germana, and the
17 last conversation was Monday.

18 And I realized that we had time constraints
19 and so on. I told him that I would meet with the
20 family one more time, and that if we intended to file
21 this action, I would let him know and I did, in fact,
22 let him know. And then before we ever came here
23 yesterday, I faxed him copies of all of the papers that
24 we proposed to present to Your Honor.

25 So finding yourself in a position now where

1 you have to order something affirmative should never,
2 ever have happened.

3 Insofar as, you know, the medical motivation
4 behind this, how would the doctor -- unless the
5 economics were considered by this committee, how would
6 that doctor who eventually reported to one of the, one
7 of children of the Betancourt family had known that
8 there's a 1.6 million dollar hospital bill outstanding?
9 How would he know that unless that was discussed in
10 that, in that hearing or that meeting that they
11 had?

12 But the fact of the matter is these are the
13 people that know best.

14 They've lived with this man, they've
15 maintained a visual for a year. It's a year to day.
16 And who is the hospital to decide that his life should
17 be terminated?

18 We're not asking for the institution of
19 treatment. We're asking that he be maintained on the
20 treatment he's received.

21 And what you see happening here; I've seen
22 all the seminars and the video clips on how we're going
23 to handle these matters. The New Jersey Supreme Court
24 in particular has always chosen to air of the side of
25 the patient.

1 What's happening now is the medical community
2 is trying to conjure a way to combat that.

3 So instead of saying we're maintaining
4 treatment and we're terminating treatment that sustains
5 life, now we're going to argue that what the court is
6 really doing is forcing us to offer treatment that we
7 shouldn't have to offer. That's just the same horse by
8 a different color.

9 All we're asking this court to do is to let
10 the man live long enough to conduct a hearing to decide
11 whether or not they have a right to kill him, and
12 that's what this is all about.

13 MR. CHRONAKIS: Judge. Certainly I can
14 appreciate this is a difficult argument because of how
15 sensitive this is and if it's, if at all for me, it's
16 undoubtedly you know, agonizing for a family to sit
17 here.

18 If this were my dad or my grandfather or my
19 spouse, I wouldn't be able to maintain the decorum that
20 Mr. Betancourt's family is, and there have been a lot
21 of difficult decisions in how to approach this even
22 over the last 48 hours.

23 But I have to take issue with the suggestion
24 that what Trinitas Hospital is doing is trying to, you
25 know, hasten or harm Mr. Betancourt or, you know,

1 unless that's some of the language used by Mr. Miller,
2 it's these physicians have cared for Mr. Betancourt as
3 best they know how as he approaches, you know, as he's
4 in this end of life stage which is difficult for
5 anybody. And they are the only ones among us who can
6 assess with any medical expertise what is happening to
7 Mr. Betancourt.

8 I would want instinctively any relative of
9 mine to stay alive at all costs.

10 That is not the only interest before the
11 court, and that is actually not the only interest as to
12 Mr. Betancourt when you have medical professionals
13 swearing before the court that the continuation of life
14 support as much as that might seem paramount to every
15 other consideration is doing active harm to Mr.
16 Betancourt's organs and to Mr. Betancourt's dignity.
17 And certainly those are interests that the family has
18 as well.

19 I only want to reemphasize one point in
20 response specifically to something that was said which
21 is certainly physicians may be aware of a financial
22 bill.

23 I am sure, and I'm up here advocating on
24 behalf of the client, that no physician at this
25 hospital and no physician that I know would change his

1 or her medical judgment depending on the bill.

2 It's easy enough to understand that given
3 that attorneys generally would not do that, an
4 attorney's bill make people live or die, they just
5 affect people's fortune sometimes and you still
6 wouldn't give different advice to a client depending on
7 if she owed you \$1,000 versus \$100,000. But
8 physicians, you know, as Ms. Levy pointed out, they're
9 the only members of society who really can sustain life
10 or make decisions regarding life.

11 This isn't a judgment based on economics,
12 Your Honor. It is a judgment based on what is
13 happening to Mr. Betancourt and the medical training
14 and education and expertise that these physicians alone
15 among the parties have.

16 Thank you, Judge.

17 THE COURT: Okay.

18 The issue before the court at this moment is
19 whether the defendant hospital should be required to
20 reinstate the provision of medical care, namely,
21 dialysis pending some further proceedings in connection
22 with this matter.

23 Whatever understandings might have been, that
24 is, the state of facts at the moment, there is medical
25 care that has been not provided in the normal

1 course.

2 It would have been, I guess, today would have
3 been the day for dialysis.

4 It is the opinion of the treating physicians
5 as expressed in the opposition papers that medical care
6 is futile. In fact, the provision of it would be
7 harmful and thus violate the standard of care under
8 which the physicians must operate.

9 The issue before the court is not one that is
10 the subject of reported decisions in this case.

11 The reported decisions in the case, namely
12 the Conroy case, In Re: Conroy, indicate that the right
13 to make medical decisions in the case of an
14 incapacitated person rests with the guardian or the
15 next of kin.

16 Here, the next of kin has made a decision,
17 notwithstanding the medical advice that they have
18 received, that treatment should be continued.

19 What the court is being urged to do by the
20 hospital is to override that choice, the choice made by
21 the next of kin.

22 On the basis that as I pointed out treatment
23 is medically inappropriate, it is against the standard
24 of care, it is harmful to the patient. For the court
25 to answer the question ultimately as to what needs to

1 be done, the court needs to be able to determine if
2 those answers given by the hospital that treatment is
3 inappropriate against the standard of care and harmful
4 is accurate.

5 What I'm presented with by the moving party,
6 the party that has the burden of proof here, is an
7 expression of a belief that the hospital's position
8 expressed through the physicians is incorrect.

9 It is the belief of the family that treatment
10 is appropriate. It is the belief of the family that
11 treatment would not be harmful. It is their belief
12 that physicians could satisfy and meet their standard
13 of care by providing treatment in this situation.

14 I'm also mindful of that line of cases which
15 talk about mandatory injunctive relief requiring a
16 party to do something is to be reserved for extreme
17 situations. It is rare that a court using the
18 temporary restraining order procedure should be
19 directing affirmative relief.

20 Having said all of that, the court's faced
21 with a situation that there is no ability, no
22 opportunity provided to the court to wait and
23 see.

24 This is an extreme situation. Certainly
25 those standards of Crowe v. DeGioia that talk about

1 irreparable harm and balancing of hardships weigh very
2 heavily in favor of the plaintiff.

3 The difficulty that the plaintiff faces by
4 way of proof is that standard in Crowe v. DeGioia that
5 talks about the settled legal right and reasonable
6 probability of success on the merits.

7 That's not been presented to the court but
8 the circumstances here are, they're extreme.

9 Mr. Betancourt would have been due for
10 dialysis today as I understand it. That has not been
11 provided based on the medical decision reached by the
12 hospital. Any inaction on the part of the court I fear
13 would be, in and of itself, a decision against the
14 interest of the Betancourt family.

15 I think we need to move and we need to move
16 quickly but something needs to be done in the meantime
17 to get us to what was the status quo a few days
18 ago.

19 I'm going to grant the request for the
20 temporary relief.

21 I am going to reestablish the status quo and
22 require the hospital to resume the treatment that was
23 being provided, the level of treatment that was being
24 provided at the beginning of this week.

25 I'm also -- I don't think we're in a position

1 now where I'm going to be setting this matter down for
2 a hearing on the application for maintaining the
3 injunction until the plaintiff provides further
4 information.

5 So while the order will be in place, I want
6 to give the plaintiff an opportunity to provide more
7 information, obtain physician certification that
8 support the position that the treatment should be
9 continued, sort of join the issue, so to speak.

10 Get us something from a doctor that indicates
11 that the belief expressed by the Betancourt family that
12 treatment should be continued, that it's appropriate,
13 not harmful, satisfies the standard of care, is in fact
14 true.

15 With that in hand, I think then I'll be in a
16 better position to address an appropriate time period
17 to set this matter down for a hearing on whether or not
18 to continue the restraint.

19 I would like, Mr. Martin, to see that, to
20 have that information within a week.

21 I would like counsel to return here in a week
22 so that we can all then with that information in hand
23 discuss again, so to speak, the continuation, the
24 appropriateness of continuing the restraints, and
25 setting the matter down for a further proceeding.

1 So I'm going to grant the temporary restraint
2 with the direction that the plaintiff provide
3 supporting information from a physician or physicians
4 with respect to their position and ask that counsel
5 return here a week from today, next Friday, two
6 o'clock, and we'll see where we go from there.

7 MR. MARTIN: Can I ask one additional
8 consideration?

9 THE COURT: Yeah.

10 MR. MARTIN: I don't know how much, if not
11 all of the record will be necessary for a physician's
12 review. But in my experience, if I were to request a
13 copy of the hospital record, it's going to
14 understandably take time.

15 Is there some way that we could suggest that
16 it be expedited?

17 THE COURT: It probably wouldn't hurt to have
18 it.

19 Can records be made available to plaintiff's
20 physician for review?

21 MR. CHRONAKIS: Certainly if you order that,
22 Judge.

23 THE COURT: They'll be -- then they'll be
24 available.

25 MR. MARTIN: Thank you, Judge.

1 MR. CHRONAKIS: Judge, in the interest of
2 candor, and so that your order can be complete, it's my
3 understanding that there is an DNR issued by the
4 hospital or not issued but directed by the hospital.

5 MS. LEVY: By the doctor.

6 On January 14, the physician, Dr. Millman,
7 entered a DNR order on the patient's medical records.
8 So there's been some question about whether they should
9 continue with the DNR or whether that should also be
10 removed.

11 THE COURT: That should be removed for this
12 week while we're operating under this temporary
13 restraining order.

14 MS. LEVY: Thank you.

15 THE COURT: Mr. Martin, you think perhaps you
16 can craft an order? Get that to me. I'll enter it as
17 soon as I get it and fax it right back to you.

18 So you're going to fax it in and I'll fax it
19 back, and I think counsel understand what the order
20 will be. So as soon as you get it to me, I'll get back
21 to you.

22 MR. MARTIN: Will do, Judge. Thank you.

23 THE COURT: Okay.

24 All right, thank you everyone. See you next
25 week.

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MR. MARTIN: Thank you, Judge.

MR. CHRONAKIS: Thank you, Your Honor.

* * *

(Whereupon, proceedings of 1-22-09 concluded)

* * *

CERTIFICATION

1
2 I, Lynn Cohen-Moore, the assigned transcriber, do
3 hereby certify that the foregoing transcript of
4 proceedings in the matter of BETANCOURT V TRINITAS
5 HOSPITAL, heard in the Union County Superior Court,
6 Chancery Division, General Equity Part, on January 22,
7 2009, Tape dated same date, Index Number 15:08:43 to
8 15:42:08, is prepared in full compliance with the
9 current Transcript Format for Judicial Proceedings and
10 is a true and accurate non-compressed transcript of the
11 proceedings as recorded.

12 AUTOMATED TRANSCRIPTION SERVICES

13 BY: Lynn Cohen-Moore

14 Lynn Cohen-Moore

A.O.C. #368

15 Dated: March 11, 2009

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
GENERAL EUIY PART
UNION COUNTY, NEW JERSEY
DOCKET NO. UNN-C-12-09

BETANCOURT)

Plaintiff)

vs.)

TRINITAS HOSPITAL)

Defendant)

TRANSCRIPT

OF

HEARING

Place: Union County Courthouse
Two Broad Street
Elizabeth, New Jersey 07207

Date: February 17, 2009

BEFORE

THE HONORABLE JOHN MALONE, J.S.C.

TRANSCRIPT ORDERED BY:

REBECCA A. EDELMAN LEVY, ESQ. (Garfunkel Wild & Travis)

APPEARANCES:

JAMES MARTIN, ESQ. AND TODD DRAYTON, ESQ.
Attorneys for the Plaintiffs, Betancourt Family

PHIL CHRONAKIS, ESQ., REBECCA A. EDELMAN LEVY, ESQ.
AND SAM GERMANA, ESQ. (Garfunkel Wild & Travis)
Attorneys for the Defendant, Trinitas Hospital

A

LYNN COHEN-MOORE
AUTOMATED TRANSCRIPTION SERVICES

P.O. Box 2230
Laurel Springs, New Jersey
(856) 784-4276

1 MR. MARTIN: Judge, just by way of
2 organization.

3 THE COURT: Okay.

4 MR. MARTIN: So we'll get some direction from
5 Your Honor, I suppose.

6 I have one physician, Dr. Goldstein, who as
7 you suggested last time we were here, would be allowed
8 to testify by phone. I have him ready anytime after
9 about 10:30.

10 THE COURT: Okay.

11 MR. MARTIN: I have family members who are
12 here today and prepared.

13 Phil mentioned that perhaps there's some
14 doctors that need to get back to the hospital, so we'll
15 need to do them first.

16 THE COURT: We had also mentioned that we'd
17 be taking witnesses out of order to accommodate
18 people's active schedules, so --

19 MR. CHRONAKIS: Of course, Your Honor. And
20 we have Drs. Millman and McHugh available to testify.
21 There's one other housekeeping note that I mentioned to
22 Mr. Martin which is Dr. Khazaei who is Mr. Betancourt's
23 nephrologist and therefore key to the dialysis issues
24 is out of the country today, and she will be back
25 tomorrow afternoon.

1 We were going to ask the court's permission
2 just for her testimony since it is essential to the
3 hospital's position, if the court would continue this
4 hearing possibly on Thursday morning just for, just for
5 her testimony if that works with Your Honor and if that
6 works with counsel or as quickly as possible if we get
7 exigency in this matter, Your Honor.

8 THE COURT: All right, well I'll have to
9 review the, review the schedule and see what we can
10 work out with that.

11 But if we've got a witness available, you may
12 as well as begin there, take care of the doctor, and
13 let him testify, so he can get on his way.

14 Okay.

15 MR. CHRONAKIS: Thank you, Judge.

16 THE COURT: Uh hum.

17 MR. CHRONAKIS: Your Honor, at this time,
18 Trinitas Hospital will call Arthur Millman to the
19 stand, please.

20 **A R T H U R E. M I L L M A N, M.D., DEFENDANT'S**
21 **WITNESS, SWORN:**

22 SERGEANT-AT-ARMS: Please state your full
23 name.

24 THE WITNESS: Arthur Edward Millman.

25 SERGEANT-AT-ARMS: Okay, spell your last

1 name.

2 THE WITNESS: M-I-double L-L-M-A-N.

3 SERGEANT-AT-ARMS: Thank you. Please be
4 seated.

5 THE COURT: Mr. Chronakis.

6 MR. CHRONAKIS: Thank you, Your Honor.

7 **DIRECT EXAMINATION BY MR. CHRONAKIS:**

8 Q Good morning, Doctor.

9 A Good morning.

10 Q Doctor, can you tell us where you went to
11 college and medical school, please.

12 A Undergraduate, I went to City College of New York
13 and for medicine, the Albert Einstein College of
14 Medicine.

15 Q And Doctor, do you have any board
16 certification?

17 A I'm boarded in Internal Medical and in
18 Cardiovascular Diseases.

19 Q And how long have you been practicing
20 medicine, Doctor?

21 A Since 1969.

22 Q Doctor, what is your specialty?

23 A Cardiovascular diseases.

24 Q And can you briefly describe your
25 professional experience since you started practicing

1 medicine?

2 A Well, I do general cardiology, noninvasive
3 cardiology and also invasive cardiology, and probably
4 the only cardiac teacher at the moment at the hospital
5 in the training program.

6 Q How long have you been instructing other
7 physicians?

8 A Since 1969.

9 Q Okay. Doctor, where are you currently
10 employed?

11 A At Trinitas Hospital.

12 Q And with respect to -- are you familiar with
13 the subject of this matter, Mr. Reuben Betancourt?

14 A Yes.

15 Q Do you have any financial interests in the
16 outcome of this case or in Mr. Betancourt's
17 disposition?

18 A No.

19 Q And if you can, describe your relationship
20 with Trinitas Hospital in terms of your tenure there?

21 A I was originally brought in in '77 to be the
22 Associate Director of Cardiovascular Diseases, and in
23 time I became the Chief of Cardiology where I've been
24 ever since.

25 Q What is your medical relationship with Mr.

1 Betancourt?

2 A He's my patient.

3 Q He's your patient. Are you, -- is it correct
4 to say you're his treating physician?

5 A I'm the doctor of record at the moment.

6 Q And how long have you worked with Mr.
7 Betancourt?

8 A It's got to be about a year by now.

9 Q Why did you take over Mr. Betancourt's
10 treatment? Or how did you come to --

11 A Well originally I saw him before he was
12 hospitalized. And then on his most recent
13 hospitalization, he was under the care of the doctors
14 who were taking care of him in the convalescent area
15 elsewhere before he was transferred back to Trinitas,
16 and then the family asked at a later time that I take
17 over his care instead of the doctors who were there and
18 I agreed.

19 Q Okay, do you know why you were asked to take
20 over his care?

21 A Well, they knew me. That's part of it, I suppose.
22 But the other part was the doctor was relatively
23 insistent that advanced life support and full
24 resuscitative measures were futile and that he really
25 didn't want to do any more of that.

1 Q How did -- if you know, how did the
2 Betancourt family know you?

3 A Oh, I suppose through Jackie.

4 Q Who is Jackie?

5 A She's Mr. Betancourt's daughter. She works for
6 me.

7 Q And what does she do for you?

8 A She's a medical assistant/secretary.

9 Q How long has she worked for you?

10 A I think about two years, I think.

11 Q Have you ever made Mrs. Betancourt, Jackie
12 Betancourt, aware of your opinions about her father?

13 A Yes.

14 Q When was that?

15 A On multiple occasions.

16 Q How long ago was the first time?

17 A Probably eleven months ago, something like that
18 when it became clear that he had a permanent anoxic
19 encephalopathy without any hope of recovery.

20 Q And does Ms. Betancourt still work with you
21 and for you?

22 A Yes.

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

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

1 intermittently septic.

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

8 Q That last part of Mr. Betancourt's diagnosis,
9 Doctor, can you explain that in --

10 A Well he had an anoxic episode in the hospital
11 after his surgery. He lost all his cognizant brain
12 function.

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

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

20 Q How old is Mr. Betancourt?

21 A 73, I think.

22 Q And Doctor you described an, I believe, an
23 anoxic episode. Can you explain what that is?

24 A He was -- he extubated himself when he was in the
25 Intensive Care Unit after his operation, and it was a

1 -- by the time they could get him re-intubated and
2 resuscitated, there had been enough time for lack of
3 oxygen to permanently damage his brain.

4 Q Doctor, in your medical opinion, what is Mr.
5 Betancourt's prognosis?

6 A He's terminally ill. He's been dying slowly and
7 painfully.

8 Q Can you describe the mechanical measures that
9 Trinitas Hospital is using to keep Mr. Betancourt alive
10 currently?

11 A He's on a ventilator that supports the breathing.
12 He's being dialyzed at least three times a week, that
13 supports the kidneys. He gets antibiotics for
14 treatment of some truly horrific decubitus ulcers and
15 continued antibiotics.

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

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

25 Q Doctor what, in your medical opinion, is Mr.

1 Betancourt's neurological state?

2 A He's in a non-cognitive state. That is there's no
3 higher mental function. None of the things that make
4 us human are present. All that's left is brain stem
5 function and the nervous system, nothing that is
6 aware.

7 Q Is -- in your opinion, is Mr. Betancourt
8 permanently unconscious?

9 A Yes.

10 Q And do you know whether this has been
11 confirmed by any other physician?

12 MR. MARTIN: Then that would be hearsay I
13 would think?

14 MR. CHRONAKIS: --Beg your pardon?

15 MR. MARTIN: I would object. That would be
16 hearsay, Judge.

17 THE COURT: If it's records that he relied
18 upon in reaching his opinion, then indicate what it is,
19 what information he had available to render his
20 opinion.

21 MR. MARTIN: Judge, if it were records, I
22 would imagine it would be records wherein these
23 physicians have expressed their opinions which would be
24 objectionable if they are complex medical opinions.
25 Additionally, as I understand it, there are a legion of

1 physicians are going to testifying following. And I
2 would imagine a neurologist, a pulmonologist, et cetera
3 will probably be here to express those opinions. To
4 ask the doctor to simply regurgitate what --

5 THE COURT: I'm assuming you're right about
6 who we're going to hear from.

7 MR. CHRONAKIS: Well, Judge, we're not
8 necessarily going to hear from all those types of
9 physicians that you unwrap a mystery. The two-
10 physician assessment is part of not only the
11 guardianship regulations but several cases that are
12 cited in both parties' briefs. But if Your Honor
13 prefers, we can tie this in later based on the
14 testimony of --

15 THE COURT: We'll just wait for other
16 witnesses then.

17 MR. MARTIN: Thank you, Judge.

18 BY MR. CHRONAKIS:

19 Q Dr. Millman, in your medical opinion, is
20 there any treatment that will improve Mr. Betancourt's
21 condition as you've described it?

22 A No.

23 Q Doctor, you made reference, I believe, to
24 problems both with Mr. Betancourt's internal organs as
25 well as with his skin. Can you elaborate on the

1 latter?

2 A Well the skin is breaking down, and there are
3 multiple huge ulcers that the wound service at the
4 hospital has been treating aggressively, but despite
5 that, he's developed infection into the bone, that's
6 called osteomyelitis which is a very pernicious thing,
7 and with poor serum proteins and with his general
8 debilitated state, he just doesn't heal, which makes it
9 very difficult.

10 When someone is at -- always in bed, which,
11 of course, he has to be, since he couldn't possibly
12 stand, since he doesn't function, you get a catabolic
13 state, that is, things start to break down,
14 particularly proteins.

15 Even when you nourish the patient with food,
16 you still generally have a negative nitrogen balance so
17 that the patient still doesn't feel as well as someone
18 who could move about, can get out of bed, can be
19 ambulated, and this becomes all the worse if you're on
20 dialysis or if you're on a ventilator, or both, and
21 it's compounded by generalized episodes of sepsis and
22 pneumonia, urinary tract infections, all of which he's
23 had.

24 The skin becomes virtually parchment like and
25 falls apart at the slightest touch.

1 MR. CHRONAKIS: Judge, may we approach?

2 THE COURT: Yeah.

3 (At sidebar)

4 MR. CHRONAKIS: Judge, we have one
5 photograph, we have several photographs of Mr.
6 Betancourt that we feel are probative, but I'm
7 concerned with at least introducing in the normal
8 course and the way the family might see them because
9 they may be upsetting.

10 So I would like to first show them to counsel
11 who hasn't seen them and then to Your Honor, and of
12 course then to Dr. Millman to authenticate and
13 testify.

14 But if nothing else, I want to make the court
15 aware that I just don't want the family to be
16 unnecessarily impacted by photographs which are rather
17 graphic, and I'm only going to introduce one, because I
18 think they may be cumulative after one.

19 THE COURT: Well, maybe you can just ask the
20 doctor that if he's testifying about the photographs
21 that's shown to him, that he just keep it down on the
22 -- I don't want him holding it up when he's testifying
23 or pointing to anything.

24 MR. CHRONAKIS: Sure. We're going to ask him
25 that on the record, Judge?

1 MR. MARTIN: You could just tell him.

2 THE COURT: Just tell him at this point.

3 (Sidebar concluded)

4 MR. CHRONAKIS: Your Honor, I've provided Dr.
5 Millman with a photograph that I'm marking for
6 identification as Defendant's Exhibit 1.

7 (D-1 marked for
8 identification)

9 BY MR. CHRONAKIS:

10 Q Dr. Millman, when was the last time you saw
11 Mr. Betancourt?

12 A Yesterday.

13 Q Doctor, if you could turn your attention to
14 the photograph marked as Defendant's Exhibit 1. I ask
15 you if you can determine when that photograph was
16 taken.

17 A Some time within the last few months. I don't
18 know if it has a date on it. Yeah, it does,
19 2/13/09.

20 Q Now Doctor, there's a -- well, do you see
21 the, a label on the photograph with Mr. Betancourt's
22 name?

23 A Yes.

24 Q Now what is the July 2008 date on that
25 label?

1 A Oh, that would be the date of admission.

2 Q Okay.

3 And what do you understand this photograph to
4 depict?

5 A This is a decubitus ulcer, Stage 4.

6 Q Okay.

7 A It's as bad as they get.

8 Q Doctor let me ask you.

9 What part of Mr. Betancourt's body we're
10 looking at in this picture?

11 A I think, I can't tell which one but it looks like
12 one of his buttocks, going over the ileac crest, and
13 you can see the bone peeping through.

14 Q Okay.

15 What -- when you last saw Mr. Betancourt, did
16 his skin condition look substantially similar to what
17 you're seeing in Defendant's Exhibit 1?

18 A Yes.

19 Q Um.

20 A He has others that are like this. This is only
21 one.

22 Q Okay, is this -- what is the medical name for
23 what we're looking at?

24 A It's a decubitus ulcer. It comes from pressure.

25 People who are cognizantly aware usually don't stay in

1 one spot. They'll move.

2 If you stay in one spot, something will sure
3 to start hurting and you'll move just so that you'll
4 feel better.

5 But if you stay in one spot because you have
6 to, then this sort of thing is very common.

7 You see it particularly in spinal cord
8 injuries and quadriplegics, paraplegics.

9 Q Doctor, does Mr. Betancourt, I think you
10 mentioned he has more than one. Where else, if any,
11 are?

12 A They're on both sides. They're present on both
13 sides.

14 Q Okay.

15 Where on his body are other ulcers?

16 A Well sir, it might make it easier if I show you.
17 Over here. They're very large.

18 Q Are they on any other part of his body
19 besides the buttocks?

20 A Nothing like this. There are other areas that are
21 more modest.

22 Q Where are those?

23 A Well on the arms, the legs, back.

24 Q And what is -- when you mention the stage 4
25 ulcer, what is the significance of that?

1 A That means that it's gone through the entire skin
2 into the subcutaneous tissue. And in this case, it's
3 gone into the bone.

4 Q And are the ulcers that you described
5 elsewhere on his body of a different stage?

6 A The other one on the other side is about the same.
7 The others are much milder. The nurses spend an awful
8 lot of time treating this. They're very good at it,
9 and so they limit it as much they can.

10 Q What do they do to treat it?

11 A Well they irrigate it, they clean it, they move
12 him off of pressure spots. He's always being rotated
13 from one side to another side.

14 They keep it very clean and the wound service
15 does a lot of very active care.

16 Q Doctor, how long have you observed ulcers at
17 any stage on Mr. Betancourt's body?

18 A From July 3, 2008.

19 Q Are these ulcers going to heal with time?

20 A No.

21 Q Why not?

22 A He is too debilitated, has too many things wrong
23 with him for this to ever get better.

24 He's getting the best treatment he can
25 possibly get for this and it really hasn't helped that

1 much.

2 Q Doctor, I want to ask you about the dialysis
3 treatment for Mr. Betancourt and start by asking
4 whether in your professional medical opinion, you
5 believe continued dialysis for Mr. Betancourt is
6 medically appropriate.

7 A It's futile, it won't help.

8 Q Do you believe that continued dialysis is
9 consistent with generally accepted standards of medical
10 practice?

11 MR. MARTIN: Judge, I would object. I think
12 the doctor's now testifying outside of his specialty.

13 BY MR. CHRONAKIS:

14 Q Doctor.

15 MR. CHRONAKIS: I'm sorry, Judge. Dr.
16 Millman has testified regarding his vast experience,
17 training and actually educational background in all
18 aspects of internal medicine.

19 We will have a nephrologist, but Dr. Millman
20 if you prefer me to further back on, is certainly
21 competent to testify regarding dialysis especially in a
22 big picture question like the one that's pending.

23 MR. MARTIN: Judge, he's being asked to
24 express a standard of care opinion in the area of
25 nephrology in which he has no credentials. There's an