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5 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
6 IN AND FOR THE COUNTY OF ALAMEDA  
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8 LATASHA WINKFIELD, the Mother of Jahi  
McMath, a minor

9 Petitioner,

10 v.

11 CHILDREN'S HOSPITAL OAKLAND, Dr.  
David Durand M.D. and DOES 1 through 100,  
12 inclusive

13 Respondents  
14

Case No. RP13-707598

ORDER FOLLOWING CASE  
MANAGEMENT CONFERENCE.

Date: 9/30/14  
Time: 1:30 pm  
Dept 31

15 The court held a case management conference at 1:30 pm on Tuesday, September 30,  
16 2014. Christopher Dolan appeared for the Petitioner. Robert Straus appeared for Respondent.  
17 County counsel David Nefouse was present, but not appearing, on behalf of the Alameda County  
18 Coroner.  
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20 BACKGROUND.

21 On December 9, 2013, Jahi McMath, a thirteen year old child, had a tonsillectomy  
22 performed at Children's Hospital of Oakland ("CHO"). On December 11 and 12, 2013, Dr.  
23 Robert Heidersbach, and Dr. Robin Shanahan examined Jahi and concluded that she had suffered  
24 brain death under accepted medical standards.  
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1 On December 20, 2013, Petitioner filed this action seeking to compel Children’s Hospital  
2 to provide medical treatment to Jahi. The parties agreed to an examination of Jahi by Paul  
3 Fisher MD, the Chief of Child Neurology for the Stanford University School of Medicine to  
4 provide an independent opinion pursuant to Health and Safety Code section 7181. Dr. Fisher  
5 examined Jahi the afternoon of December 23, 2013. Dr. Fisher opined that Jahi was brain dead  
6 under accepted medical standards. On December 24, 2014, the court held a hearing and then  
7 announced from the bench that the court’s order was to deny the petition for medical treatment.

8 On December 26, 2014, the court issued a written order that denied the petition for  
9 medical treatment. In the course of addressing the claims in the petition, the court found that  
10 Jahi had suffered brain death as defined by Healthy and Safety Codes 7180 and 7181.  
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12 On January 3, 2014, the court held a hearing and issued an order that denied Petitioner’s  
13 motion for a court order ordering either that Respondent insert a feeding tube and a tracheal tube  
14 into the person of Jahi McMath or that Respondent permit Petitioner to have a physician insert a  
15 feeding tube and a tracheal tube into the person of Jahi McMath at the hospital. In explaining  
16 that decision, the court stated, “Jahi McMath has been found to be brain dead pursuant to Health  
17 and Safety Code sections 7180-7181.”  
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19 On January 17, 2014, the court entered a “Final Judgment” in this case. The judgment  
20 states, in part, “the Petition of Latasha Winkfield as mother of Jahi McMath, a minor, is  
21 DENIED” and “the motions of petitioner that respondent perform or permit surgical procedures  
22 was DENIED as stated in the order dated January 17, 2014.”

23 On Wednesday September 24, 2014, counsel for petitioner sent an email to the court that  
24 stated:  
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1 Dear Clerk in Department 31

2 From preliminary information I have received, to be soon verified, I believe that I  
3 will be asking the court to reverse its ruling on brain death. As there is no other  
4 party with standing (the hospital was, dismissed after Jahi was released and we  
5 are not seeking to have her re-admitted - therefore Children's no longer has an  
6 interest), I expect to do this by ex-parte application pursuant to CCP Section  
7 128(8)(B). I would request a hearing date next Thursday and would like to know  
8 what day the court would require briefing to be submitted by. I intend to have  
9 declarations from various healthcare providers (experts in Neurology, EEG's and  
10 Neuro Science) and live testimony from two expert witnesses. I also expect to  
11 submit video/photo evidence to the court.

12 I have made no announcements to any press as of this time but they are bound to  
13 catch wind so I also would like to confirm that Judge Grillo would hear the matter  
14 in Department 31 rather than some other courtroom where we can use a projector  
15 or TV to present evidence of a visual nature.

16 Please tell the Court that I understand that this matter placed a great strain on the  
17 court previously and I want to try and approach this deliberately and not by  
18 surprise to the Court.

19 On Thursday, September 25, 2014, the court notified counsel that it would set a case  
20 management conference for 1:30 pm on Tuesday , September 30, 2014.

21 On Friday September 26, 2014, counsel for petitioner sent an email to the court and all  
22 parties that stated:

23 Can we move the hearing date From September 30, 2014 to October, 2, 2014. I  
24 have experts flying in for this hearing and they are only available on Thursday.  
25 Also, will the court allow my experts to give testimony and if the hearing is  
26 continued to Thursday, when are the written materials due. Thank you for your  
assistance with this matter.

On Friday September 26, 2014, the court through its research attorney sent an email to  
the court and all parties that stated:

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1 Counsel and Dr. Fisher,

2 I have spoken with Judge Grillo. The CMC will remain on calendar for Tuesday,  
3 September 30, 2014. It is a CMC and is not a hearing on the merits of any  
4 motion. The court does not expect to hear testimony. The court will want the  
5 parties to address this court's jurisdiction to entertain any motion given that  
6 judgement was entered in January 2014. Assuming jurisdiction, there might be  
7 other case management issues that the court will want to address.

8 The court held the CMC on Tuesday, September 30, 2014.

9 ORDER.

10 The CMC on September 30, 2014, was a CMC and there was no motion or application  
11 pending. Petitioner now asserts that there is new evidence and intends to seek an order in this  
12 case that Jahi McMath has not suffered brain death.

13 Petitioner must serve and file her motion or application on or before 2:30 pm on Friday,  
14 October 3, 2014.

15 Respondent CHO must serve and file any opposition on or before 12:00 noon on  
16 Wednesday , October 8, 2014.

17 Interested third parties such as the Alameda County Coroner and the California  
18 Department of Public Health may serve and file statements on or before 12:00 noon on  
19 Wednesday, October 8, 2014. The court will consider such statements as in the nature of amicus  
20 curiae filings. (*Lopez v. Nissan North America, Inc.* (2011) 201 Cal.App.4th 572, 579-590 [“the  
21 trial court issued a notice to the California Attorney General and the Department requesting the  
22 Department's position on” the relevant issue]; *Blue Cross of California, Inc. v. Superior Court*  
23 (2009) 180 Cal.App.4th 1237, 1246 [“The DMHC filed an amicus curiae brief in support of  
24 defendants' demurrer”].)

1 The court will hear Petitioner’s motion or application on Thursday October 9, 2014, at  
2 9:00 am. The court will hear the matter on the papers, including any audiovisual recordings.

3 The court will not hear live testimony. (CRC 3.1306.)

4 The court ORDERS petitioner to give notice of this order to the Alameda County  
5 Coroner and the California Department of Public Health in a manner intended to permit them to  
6 participate in the hearing .

7 The court ORDERS that all of the above papers be served by email, by same day  
8 delivery, or by overnight delivery.

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10 At the hearing on October 9, 2014, the court will consider several procedural matters in  
11 addition to hearing Petitioner’s motion or application. To assist the parties in addressing the  
12 court’s concerns, the court sets out its tentative analysis below. The analysis is below is  
13 expressly tentative and is not an order of the court. (*Silverado Modjeska Recreation and Parks*  
14 *Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 300 [“a trial court's tentative ruling is not  
15 binding on the court”].)

16 Tentative thoughts on jurisdiction. The court entered judgment in this case on January  
17 17, 2014. The general rule is that the court loses jurisdiction on the entry of judgment. *Nave v.*  
18 *Taggart* (1995) 34 Cal.App.4th 1173, 1177, states:

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20 Once a trial court makes a decision after regular submission, it has no power to set  
21 aside or amend its ruling for judicial error except under appropriate statutory  
22 proceedings. ... A judgment is a final determination of the rights of the parties in  
23 an action or proceeding. ... A judgment is final in this sense when it terminates the  
24 litigation between the parties on the merits and leaves nothing in the nature of  
25 judicial action to be done (other than questions of enforcement or compliance). ...  
26 After judgment a trial court cannot correct judicial error except in accordance  
with statutory proceedings.

1 Where, however, the plaintiff for petitioner sought and obtained injunctive relief, then the  
2 court retains jurisdiction to modify the relief “when the ends of justice will be thereby served.”  
3 (*Broughton v. Cigna Healthplans of California* (1999) 21 Cal.4th 1066, 1079.) (See also *Welsch*  
4 *v. Goswick* (1982) 130 Cal.App.3d 398, 404].) The court could, arguably, modify the relief  
5 granted. There are two problems with this: (1) the court denied the petition and did not grant  
6 relief and (2) petitioner is not seeking to modify the relief sought previously by seeking an order  
7 directing Children’s Hospital to provide new or different medical services to Jahi McMath.

8 Tentative thoughts on notice of claims against the proper respondents. A complaint or  
9 petition must identify all necessary parties as defendants or respondents. (CCP 389(a).) A  
10 complaint or petition must also identify the claims in a case. (CCP 425.10.) Although a party  
11 may add parties and may amend or supplement a complaint, a party at a hearing on the merits  
12 cannot pursue claims against non-parties or seek relief that was not identified in the complaint or  
13 petition. To permit otherwise would be to deny the real parties in interest notice of the claims  
14 asserted and an opportunity to oppose the claims.

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16 The petition in this case sought to compel Children’s Hospital to provide services to Jahi.  
17 Petitioner now seeks to compel some state entity, presumably the Alameda County Coroner or  
18 the California Department of Public Health, to void Jahi McMath’s death certificate. Petitioner  
19 therefore seeks to assert new claims against entities that were and are not parties to this case. It  
20 would seem that if Petitioner were to seek an order in this case that Jahi is not brain dead, then  
21 Petitioner would need to supplement the petition to name the interested parties and to state her  
22 new claim. (CCP 464.) The court has found no case law addressing whether a party may move  
23 to file a supplemental petition or complaint after entry of judgment.  
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1           Tentative thoughts on access to the courts and due process. Petitioner argues that this  
2 court's order of December 26, 2013, decided that Jahi McMath had suffered brain death and that  
3 Petitioner therefore must return to this court in this case to seek relief. The fact that this case  
4 resolved many issues concerning Jahi does not, however, mean that this case is a procedural  
5 vehicle for all future legal issues concerning Jahi.

6           Health and Safety Code section 103225 et seq sets out a procedure for amending a record  
7 of death. The California Department of Public Health Vital Records has a form "Affidavit to  
8 Amend a Death Record." (Form VS 24 (Rev 1/08.))<sup>1</sup> Petitioner may seek relief from the  
9 California Department of Public Health. If Petitioner is not satisfied with the result at the  
10 California Department of Public Health, then Petitioner may file a petition for a writ under CCP  
11 1095 or CCP 1094.5.

12           Petitioner could file an action asserting a claim of some form against appropriate  
13 defendants (E.g., California Department of Public Health Vital Records, Alameda County  
14 Coroner, etc.) seeking declaratory and/or injunctive relief.

15           The fact that this court made a finding of brain death based on the evidence presented in  
16 December 2013 would not appear to prevent this court, or some other court, or the California  
17 Department of Public Health from reaching a different conclusion based on new facts.  
18 California law on claim preclusion and issue preclusion permits "reexamination of the same  
19 questions between the same parties where in the interim the facts have changed or new facts have  
20 occurred which may alter the legal rights of the parties." (*City of Oakland v. Oakland Police and*  
21 *Fire Retirement System* (2014) 224 Cal.App.4th 210, 230.)

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26 <sup>1</sup>(<http://www.cdph.ca.gov/certlic/birthdeathmar/Pages/CorrectingorAmendingVitalRecords.aspx>)

1 The court expresses no opinion on the proper procedural vehicle for petitioner to request  
2 a determination that Jahi McMath has not suffered brain death, is not deceased under the law,  
3 and that her death certificate should be voided. The court's tentative thinking is that the issue is  
4 not presented properly in this case.

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6 Dated: October 1, 2014

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8 Evelio Grillo  
9 Judge of the Superior Court  
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