

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY DIVISION

IN RE:)
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 M.B.)
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)
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20101-3 12 3 36

08 FSP 310

COMPLAINT
(FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT)

COMES NOW, Children's National Medical Center, commonly known as Children's Hospital, (hereinafter "Hospital") and moves by and through the undersigned counsel as follows:

1. The Court has jurisdiction pursuant to D.C. Code § 11-921(a) and D.C. Rules of Civil Procedure (RCP) 57 permits a declaratory judgment.
2. Patient M.B. has been a patient at Children's National Medical Center for approximately six months. He recently succumbed to a brain cancer.
3. M.B. was regrettably evaluated as brain dead on November 02, 2008 at 4:55 p.m. The parents were informed of the result and were informed that the Hospital would perform another examination within twelve hours to confirm the brain death. The Hospital would also do another confirmatory test such as an EEG or cerebral radionuclide study. If these tests confirmed the first results then brain death would be confirmed under D.C. guidelines.
4. Brain death is the medical and legal standard for death in the District of Columbia.

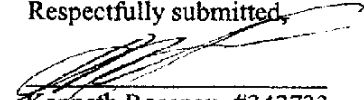
5. The parents requested that the Hospital would defer the next test, however, the Hospital stated that they would proceed with all tests. The Hospital explained what would happen if the Parents did not agree with the results of the confirming tests and reported that the Parents demonstrated an understanding of these procedures. (See Apnea and Brain Death Evaluation results attached as Exhibit A).
6. That the parents' attorney, Mr. Biser, contacted the hospital and stated that they were opposed to further brain testing, and he also stated that that if the Hospital pursued the tests then Judge Collyer of the Federal Court would request an appearance before her prior to the test. In the meantime the Judge requested, as a courtesy, that the Hospital maintain the ventilator and refrain from performing any further tests.
7. However, there has been no order issued by Judge Collyer, as of 12:30 PM on November 3, 2008.
8. That the parents are of the Orthodox Jewish faith and as part of their faith they believe that life ends when the heart stops beating as opposed to when the brain stops working. Further, Judge Collyer indicated at 9:30 AM, on November 3, 2008, that she was not exercising jurisdiction.
9. The issue in this case is whether the Hospital has the authority to follow the stated procedure when a patient is considered brain dead, or whether the parents wishes take precedent over hospital procedure in this case.
10. At this stage the parents are refusing to make any decisions regarding their child, except actions the Hospital does not wish to take.

11. A guardian ad litem should be appointed to make a decision regarding further tests for the child.
12. The following people have been contacted as possible Guardian Ad Litem regarding M.B.: Ira Zimmerman, George Teitlebaum, and Ethan Suskine.
13. We are seeking relief of the Court as an alternative to harsher, less tolerable rights of self-help we could invoke.
14. Nevertheless, the Parents' reaction seems outside the normal "grief reaction" regrettably seen all too often at a specialty hospital such as Children's. Unlike conventional hospitals we see far more fact patterns of this type.

WHEREFORE, Children's National Medical Center seeks:

- a. That the court issue a declaratory judgment stating that the Hospital is permitted to take the required tests to confirm that M.B. is brain dead and stop all treatment.
- b. Any further relief as this Court deems just and equitable and balances the best interests of the patient, and duties of all parties.

Respectfully submitted,



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