



# UCSF Benioff Children’s Hospital v. Superior Court of Alameda County (Cal. S.Ct.)

Topics Covered: Abusive Litigation Against Physicians

## **Outcome: Unfavorable**

### **Issue**

The issue in this interlocutory appeal was whether a probate court declaration of death precludes a claim that the decedent is actually still alive and can therefore sue a hospital and a physician for medical negligence (as opposed to wrongful death).

### **AMA Interest**

AMA is to assist state medical societies in developing and implementing anti-lawsuit abuse campaigns.

### **Case Summary**

Jahi McMath underwent surgery for sleep apnea at UCSF Benioff Children’s Hospital (Children’s Hospital). Several hours after the surgery, she went into cardiac arrest. Two Children’s Hospital physicians examined her and concluded she was dead. The physicians also concluded there was no medical justification to provide her with further medical treatment.

After McMath was declared dead, her mother and other family members brought suit in the Alameda County Probate Court to challenge the declaration of death and require Children’s Hospital to provide medical treatment. In opposition to this suit, Children’s Hospital submitted declarations from three physicians, all attesting to McMath’s irreversible brain death.

The probate judge then appointed a board certified child neurologist to serve as an independent expert and opine on McMath’s death. McMath’s family agreed to the neurologist’s qualifications to serve as an expert. The neurologist examined McMath and confirmed she was dead. After an evidentiary hearing, the Probate Court declared McMath dead pursuant to the Uniform Determination of Death Act, codified at Cal. Health & Safety Code § 7180 (a), which provides that an individual who has sustained irreversible cessation of all brain functions is deemed dead.

Following the determination of the Probate Court, the County Coroner issued a death certificate and then transferred custody of McMath’s body to her family. Reportedly, the family has removed the body to an undisclosed facility in New Jersey, where it remains on ventilator support at the expense of the New Jersey Medicaid Program.

Aside from the Probate Court action, McMath's family brought five other lawsuits to challenge the finding of death. Three were filed in California state courts, and two were filed in the United States District Court for the Northern District of California.

The present case is seeking monetary damages from Children's Hospital and McMath's physician, based, inter alia, on causes of action arising out of medical negligence. The complaint alleges that McMath's heart is still beating and that, since the certification of her death, she has had pubertal development (including menstrual cycles) and has displayed "intermittent responsiveness to verbal commands."

The defendants moved to dismiss the claims for medical negligence, based on the various determinations of death. They asserted that the medical negligence claims could not be legally viable after McMath's death. Following briefing and argument, the trial court denied the motion to dismiss the medical negligence claims. However, the court did grant a request from the defendants to certify, for interlocutory ruling, questions regarding the preclusive effect it should give to the Probate Court ruling that McMath was dead. Those certified questions are the subject of the present action.

Both the Court of Appeal and the California Supreme Court declined to accept jurisdiction, without giving an explanation.

### **Litigation Center Involvement**

The Litigation Center and the California Medical Association filed an *amicus* letter brief, which urged the Court of Appeal to hear the interlocutory appeal.

California Court of Appeal letter brief