

November 6, 2008 Thursday
Suburban Edition

D.C. Hospital Sues to Remove Boy, 12, From Life Support

Del Quentin Wilber;
Washington Post Staff Writer

The family of a 12-year-old New York boy is entangled in a legal fight with Children's National Medical Center over whether doctors can cease life support because they believe he is brain-dead.

The dispute involves Motl Brody of Brooklyn, who was diagnosed with a severe form of brain cancer. The boy has been under the care of the Northwest Washington hospital for about six months. His tumor grew progressively worse, and doctors there pronounced him dead Tuesday night after tests showed no signs of brain activity.

His parents, Eluzer and Miriam Brody, are trying to prevent the hospital from taking him off life support because they say their faith does not define death as cessation of brain function alone. The parents, Orthodox Jews, have retained a lawyer who says that the boy's circulatory and respiratory systems are functioning, although with mechanical and other assistance.

"Under Jewish law and their faith, there is no such thing as brain death," said the parents' attorney, Jeffrey Zuckerman. "Their religious beliefs are entitled to respect."

The hospital has taken the dispute to D.C. Superior Court. In filings, the hospital extended its sympathy to the family but said the boy should no longer be on its equipment, saying that "scarce resources are being used for the preservation of a deceased body."

Under D.C. law, doctors can declare patients dead if there is no brain activity. The hospital wants a court order, over the parents' objections, that affirms its plan to disconnect the boy from a ventilator and to discontinue intravenous medications that keep his heart beating.

But Zuckerman says that doing so would infringe upon religious freedom.

The case is awaiting a ruling from Judge William Jackson.

"This child has ceased to exist by every medical definition," Sophia Smith, one of the boy's physicians, wrote in court papers, adding that she and her staff members are "distraught at what is providing futile care to the earthly remains of a former life."

"There is no activity in any portion of his brain, including the brain stem," she wrote. "Ethically, there is no appropriate treatment except removal of the ventilator and of the drugs."

A spokeswoman for the hospital, Emily Dammeyer, declined to comment on the case yesterday, citing patient privacy rules.

In court papers, the hospital's lawyers wrote that doctors have no choice but to stop life support or risk fines and other sanctions. They added that the hospital tried to find other facilities to take the boy but that none would admit him because he is brain-dead.

"Continuing any support to this child eliminates any dignity this child has left," wrote Kenneth H. Rosenau, an attorney for Children's. "There is no religious principle at issue in this case, but a clash on the definition of death."

Motl, a seventh-grader, is the third of seven siblings. His uncle, Yitzchak Halberstam, said the boy began feeling listless about six months ago. He was eventually diagnosed with an aggressive tumor and quickly had surgery. He never regained consciousness, Halberstam said.

Halberstam said Motl was "a special kid."

"When you looked at him," he said, "you just wanted to walk over and hug him."

Zuckerman, the family's lawyer, said he is challenging the hospital's plans on grounds that the family's religious beliefs must be respected under federal law.

Legal experts said that courts usually defer to the judgment of doctors in such cases.

"The case law is clear: Once you are dead, you are dead," said George Annas, a law professor at Boston University who specializes in health law and bioethics.

Annas added that New York and New Jersey have provisions in their laws or regulations that make exceptions in similar instances for Orthodox Jews. The District does not.