

Brain Dead and Pregnant:  
The Legal and Ethical Considerations  
and Impact of the Marlise Muñoz Case.

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- Tuesday before Thanksgiving
- 2 AM—Marlise found unconscious (1 hour at least without oxygen)
- Thanksgiving Day—determined to be braindead
- Hospital would not remove Marlise from support

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## Texas Health and Safety Code 166.049

- Sec. 166.049. PREGNANT PATIENTS. A person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient.

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JPS HOSPITAL  
1500 South Main St  
FORT WORTH, TX 76104  
Inpatient Record

MUNOZ MARISE  
[Redacted] Sex: F  
Adm 11/26/2013, DIC

### Hospital Encounter Notes (continued)

#### Physician Notes (continued)

|                        |                         |
|------------------------|-------------------------|
| Name: Marise MUNOZ     | DOB: [Redacted]         |
| MR#: [Redacted]        | Age/Sex: 33 y.o. female |
| Room #: [Redacted]     |                         |
| Admit Date: 11/26/2013 | Admitting: [Redacted]   |

**Interval:** 33 year old G2P1 at 21wdd by 14w'd sono admitted to ICU on 11/26/13. Patient presented to ED via EMS for cardiac arrest, found at home on the floor pulseless. She was known pregnant, gestational age approximately 9 weeks. Dr Garda was called to bedside to sonographically evaluate patient - sono showed 14w'd CRL.

Patient was intubated and sent to ICU. Verbal discussion with ICU resident reported severe anoxic brain injury with likely brain death. Ethical recommendations regarding withdrawal of care in context of previable however in context of Texas State Law forbidding withdrawal of care per the

Advance Directive Act supportive care has been continued.  
(Advanced Directive Act, Sec. 166.049. PREGNANT PATIENTS. A person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient. Acts 1989, 71st Leg., ch. 870, Sec. 1, eff. Sept. 1, 1989. Renumbered from Sec. 672.019 and amended by Acts 1999, 76th Leg., ch. 450, Sec. 1.03, eff. Sept. 1, 1999).

Discussed with family at length, who is very upset with current situation. Continuing care per ICU team. Plan for daily fetal heart tones. NG tube in place. PICC line recently placed. Trach in place. Family wishes to discuss case with other physicians in the US, with plan for potential transfer to another institution. Currently not medically stable for transfer. PEG tube placed 12/20/13 without complications. Fetal heart tones documented prior and after procedure. Patient diagnosed with VAP and started on cefepime and vancomycin on 1/5/14.

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#### Follow-up MFM Hospital Evaluation/Consult Note

Admission and daily records to date were reviewed with the Perinatal Team and patient evaluated at bedside

The patient is a 33 y.o. female, G2 P1001 with EGA of 20 2/7 wks by sono at 14 weeks at bedside in ICU with a date of admission 11/26/13 from Direct Admit from ED to ICU with an admitting diagnosis of 1) **anoxic brain injury and likely Brain Death** per ICU criteria. Perinatal consult obtained for known late first trimester pregnancy presently still with documented FHR. Patient is presently intubated on life support. Family wishes removal of life support and realizes such action will result in eventual fetal demise in utero. They wish to undertake such action though have been told that this is against Texas statute that only allows for maternal consent for 'elective abortion' and statutes forbidding removal of life support on pregnant women regardless of Advanced Directives.

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Assessment

Patient is 33 yo female at 20w6 by 14w2d US with respiratory failure and clinical brain death s/p cardiac arrest

Principal Problem:  
Ventilator associated pneumonia

Active Problems:  
Pregnancy  
Respiratory failure  
Iron deficiency anemia  
Cardiac arrest  
Diabetes insipidus  
Hypopituitarism  
Brain dead  
DVT (deep venous thrombosis)

LOS: 47 days

Normal prealbumin  
- prostat supplementation  
- this is the likely etiology of the elevated BUN/Cr ratio, along with muscle break down and steroids.

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Hospital Encounter Notes (continued)

Physician Notes (continued)

Plan of Care signed by Collins, Roxanne, RN at 1/12/2014 9:56 AM

|         |                      |            |                   |              |                  |
|---------|----------------------|------------|-------------------|--------------|------------------|
| Author: | Collins, Roxanne, RN | Service:   | (none)            | Author Type: | Registered Nurse |
| Filed:  | 1/12/2014 9:56 AM    | Note Time: | 1/12/2014 9:56 AM |              |                  |

**Problem: Grieving, Unresolved (Adult, NICU, Obstetrics, Pediatric)**  
**Goal: Grief Recognition (Grieving, Unresolved)**  
Patient will demonstrate the desired outcomes.  
Family presence promoted at bedside. Pastoral services available for family if needed

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Texas Health and Safety Code  
166.049

- Sec. 166.049. PREGNANT PATIENTS. A person may not withdraw or withhold life-sustaining treatment under this subchapter from a pregnant patient.

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# Texas Health and Safety Code

## 166.031

- Sec. 166.031. DEFINITIONS. In this subchapter:
- (1) "Directive" means an instruction made under Section 166.032, 166.034, or 166.035 to administer, withhold, or withdraw life-sustaining treatment in the event of a terminal or irreversible condition.
- (2) "Qualified patient" means a patient with a terminal or irreversible condition that has been diagnosed and certified in writing by the attending physician.

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# Texas Health and Safety Code

## 166.002

Sec. 166.002. DEFINITIONS. In this chapter:

- (a) "Irreversible condition" means a condition, injury, or illness:
  - (A) that may be treated but is never cured or eliminated;
  - (B) that leaves a person unable to care for or make decisions for the person's own self; and
  - (C) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.
- (b) "Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support, such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered to be necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

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# Recommendations

**RECOMMENDATION:**  
Ethics committee and legal departments to be formally consulted and petitioned regarding case. I do not believe the intent of the Texas statute was intended to apply in this very unique case. If necessary, I feel judicial review is warranted to provide relief for both the family and the JPS institution and allow removal of life support as desired by family.  
The ability to sustain the pregnancy for the necessary 10+ wks (possibly as long as 20 wks) seldom is successful and will result in both significant financial and emotional harm which could otherwise be avoided. Case should be managed by ICU purely based on maternal concerns and not modified to accommodate this very pre-viable gestation < 24 wks EGA.  
Will obtain anatomic survey 18-20 wks and f/u biometric at 24-26 wks.

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# Fetal Medical Issues

- Clubbed feet
- Deformed lower extremities
- Hydrocephalus
- Heart deformity
- Unable to determine gender

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## Baby Munoz: first forced abortion documented in Texas

Trapped Between Life, Death, and the Politics of Abortion: The Marlise Muñoz Case

## Pregnant Woman's Brain-Dead Diagnosis Renews Abortion Debate (nola)

## 'Pro-life' until birth: Muñoz case highlights political tensions in Texas

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# Stipulations

## STIPULATION OF FACTS

The Parties stipulate to the following facts and agree that no live testimony will be presented at the hearing on the Motion To Compel unless otherwise requested by the Court:

1. On November 26, 2013, Mrs. Munoz collapsed at her home and was found not breathing by Mr. Munoz.
2. Mr. Munoz resuscitated Mrs. Munoz and called 911.
3. Mrs. Munoz arrived at John Peter Smith Hospital (JPS) alive, in cardiac arrest and with respiratory failure, and was placed on life sustaining treatment.
4. Mrs. Munoz was 14 weeks pregnant at the time she arrived at JPS on November 26, 2013.
5. Mrs. Munoz is now 22 weeks pregnant.
6. Mrs. Munoz has met the clinical criteria for brain death since November 28, 2013.

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## Stipulations (cont.)

7. Mr. Munoz requested, and continues to request, withdrawal of life sustaining treatment, but JPS refused, and still refuses, based on Texas Health & Safety Code §166.049.
8. All entries in the medical records of Marlise Munoz related to Ms. Munoz's diagnosis and medical condition produced by JPS to attorneys for Mr. Munoz shall be admissible in the hearing on January 24, 2014, to the extent either or both parties seek such admission.
9. The affidavit of Erick Munoz attached to the Plaintiff's First Amended Motion to Compel Defendants to Remove Marlise Munoz from "Life Sustaining" Measures and Application for Unopposed Expedited Relief shall be admissible in the hearing on January 24, 2014, to the extent either or both parties seek such admission.
10. At the time of this hearing, the fetus gestating inside Mrs. Munoz is not viable.

## The Hospital's Argument

The Texas Legislature further demonstrated its commitment to protect unborn children by recently enacting the Woman's Right To Know Act. (Acts 2013, 83rd Leg., ch. 1 (H.B. 2), codified in Health & Safety Code chapter 171).

Section 1(a) of the bill states:

"The findings indicate that:

- (1) substantial medical evidence recognizes that an unborn child is capable of experiencing pain by not later than 20 weeks after fertilization;
- (2) the state has a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that these children are capable of feeling pain;"

The Legislature asserted a compelling state interest in protecting unborn children from experiencing pain from the time of 20 weeks after fertilization. The unborn child of Ms. Munoz, then, is a subject of this compelling interest.

## Texas Health and Safety Code 171.046

Sec. 171.046. EXCEPTIONS. (a) The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply in an abortion performed if there exists a condition that, in the physician's reasonable medical judgment, so complicates the medical condition of the woman that, to avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function, other than a psychological condition, it necessitates, as applicable:

- (1) the immediate abortion of her pregnancy without the delay necessary to determine the probable post-fertilization age of the unborn child;
- (2) the abortion of her pregnancy even though the post-fertilization age of the unborn child is 20 or more weeks; or
- (3) the use of a method of abortion other than a method described by Section 171.045(b).

(b) A physician may not take an action authorized under Subsection (a) if the risk of death or a substantial and irreversible physical impairment of a major bodily function arises from a claim or diagnosis that the woman will engage in conduct that may result in her death or in substantial and irreversible physical impairment of a major bodily function.

(c) The prohibitions and requirements under Sections 171.043, 171.044, and 171.045(b) do not apply to an abortion performed on an unborn child who has a severe fetal abnormality.

Added by Acts 2013, 83rd Leg., 2nd C.S., Ch. 1, Sec. 3, eff. October 29, 2013.

## Judgment

### JUDGMENT

On this date came on to be heard *Plaintiff's First Amended Motion to Compel Defendants to Remove Marlise Muñoz from "Life-Sustaining" Measures and Application for Unopposed Expedited Relief* in conjunction with *Plaintiff's First Amended Original Petition for Declaratory Judgment and Application for Unopposed Expedited Relief*.

Having considered those matters, the Court finds:

1. The provisions of § 166.049 of the Texas HEALTH AND SAFETY CODE do not apply to Marlise Muñoz because, applying the standards used in determining death set forth in § 671.001 of the Texas HEALTH AND SAFETY CODE, Mrs. Muñoz is dead.
2. In light of that ruling, the Court makes no rulings on the Plaintiff's constitutional challenges to § 166.049.

**IT IS THEREFORE ORDERED** that *Plaintiff's First Amended Motion to Compel Defendants to Remove Marlise Muñoz From "Life-Sustaining" Measures* is granted and that the Defendants are ordered to pronounce Mrs. Muñoz dead and remove the ventilator and all other "life-sustaining" treatment from the body of Marlise Muñoz no later than 5:00 p.m., Monday, January 27<sup>th</sup>, 2014.

All relief not expressly granted herein is denied.

SIGNED this 24<sup>th</sup> day of January 2014.

  
R. H. WALLACE, JR., JUDGE PRESIDING

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## Texas Lt. Governor Debate



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## Question #1

- "John Peter Smith Hospital in Fort Worth unplugged life support for a brain dead pregnant woman yesterday after a Judge sided with her family who wanted her taken off that support in spite of her pregnancy, should the state require hospitals to keep patients on life support in situations like this or should it honor the wishes of the family, whatever those might be?"

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- Jerry Patterson—"tragic intersection of right to life concerns and when does life end as far as the mother in this case...in my view, we should always err on the side of life".
- Dan Patrick—"Life is so precious. There is nothing more precious than the life of a baby in the womb. Regardless of the circumstances surrounding that life, we should always do everything to protect that life."
- Todd Staples—"There was life, and it is the responsibility of us as a society to have laws and regulations that encourage life and protect life and tries to find a viable way to continue to promote that life....I think the next legislative session we are going to have to go in and clarify what the meaning of the statute is in order to remove the ambiguity...we want to give unborn children the opportunity to live the American dream in the lone star state."
- David Dewhurst—"Strong believer in life...baby passed 20 weeks...this baby could have been born..."

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## Question #2

- "Would you change the law or do you think the legislature should readdress this?"

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- Jerry Patterson—"We have to change the law, we have conflicting statutes...we have a 20 week provision, and then we have the legal definition of what is alive and what is not."
- Dan Patrick—"We must protect life at all ages, at all costs, at all times."
- Todd Staples—"We need to make sure that as a state we are supporting the life of the child and the life of the mother."
- David Dewhurst—"If you have a viable baby and it can be born then that's a life so I think it was a mistake, so I think we need to clarify the law."

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## Other Cases

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## Robyn Benson



- Canada 2014
- Brain bleed
- 22 weeks (viable)
- Agreement to keep on "life sustaining" measures
- Kept on "life sustaining" measures for one month.

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## Dublin Woman

- Dublin, Ireland 2014
- Brain death due to falling
- 18 weeks (not viable)
- No agreement to keep on "life sustaining" treatment
- Doctors said the fetus could not survive another 2 months in the dead woman's body as the body rife with infections, growth, fever, etc.
- Dublin high court terminated life-sustaining measures.

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## Karla Perez



- Nebraska 2015
- Brain bleed
- 22 weeks (viable)
- Agreement to keep on “life sustaining” measures
- Kept on “life sustaining” measures for 7 weeks.

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## Portugal Woman

- Portugal 2016
- Brain hemorrhage
- 17 weeks (non-viable)
- Agreement to keep on “life sustaining” measures
- Kept on “life sustaining measures” 15 weeks
- Baby was healthy and had no issues at time of mother’s death

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## Changes to the Law

- Bill sponsored by Rep. Matt Krause
- H.B. 1901
- Bill would require that pregnant, DEAD women must stay on life sustaining treatment.

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# Louisiana Bill

E. It is the policy of the state of Louisiana that human life is of the highest and inestimable value through natural death. When interpreting this Part, any ambiguity shall be interpreted to preserve human life, including the life of an unborn child if the qualified patient is pregnant and an obstetrician who examines the woman determines that the probable postfertilization age of the unborn child is twenty or more weeks and the pregnant woman's life can reasonably be maintained in such a way as to permit the continuing development and live birth of the unborn child, and such determination is communicated to the relevant classes of family members and persons designated in R.S. 40:1299.58.5.

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# Karen Ann Quinlan



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# Cruzan v. Missouri Department of Health



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OTHER ARGUMENTS

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Final Thoughts



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