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An 8-year-old was taken off life support, his organs donated. Now, police are investigating

By RICHARD WINTON and HARRIET RYAN JUN 12, 2017 | 5:00 AM



The LAPD is investigating a claim that a UCLA anesthesiologist gave an 8-year-old being taken off life support a fatal dose of fentanyl to hasten his death for organ donation. (Damian Dovarganes / Associated Press)

By the time Cole Hartman arrived at Ronald Reagan UCLA Medical Center, he was in grave condition. The 8-year-old had gone into cardiac arrest after nearly drowning in a washing machine at his Castaic home. Paramedics had gotten his heart beating again, but he remained in a coma and on a ventilator.

Physicians at UCLA's pediatric intensive care unit told Cole's family that the child was not brain-dead but "would never recover normal neuro function and ... could never awaken," according to an entry in his medical chart.

The Hartmans decided to take Cole off life support and donate his organs. He was removed from the ventilator and, 23 minutes later with his family at his bedside, pronounced dead by an anesthesiologist.

The seemingly peaceful death four years ago is now the subject of an investigation by Los Angeles police and the district attorney's office. Homicide detectives are looking into an allegation by a coroner's investigator that the anesthesiologist gave Cole a fatal dose of the opioid fentanyl to hasten his death and increase the likelihood his organs could be harvested. No charges have been brought.

A lawyer for the anesthesiologist, Dr. Judith Brill, said the allegation was "factually wrong and patently offensive."

Brill's "only concern was to assure that this child, who had drowned and was never going to recover, would not suffer any pain following the removal of life support," attorney Mark Werksman wrote in an email to The Times.

The probe is one of only a handful of known criminal investigations into a doctor's role in an organ donation, and it offers a window into the ethical issues that can play out during a donor's last moments of life.

"As you can imagine, this is very complicated," said LAPD Capt. William Hayes, who oversees the elite Robbery-Homicide Division conducting the investigation. "We need to clearly understand what was done and the implications of those actions."

Detectives opened the case earlier this year. Denise Bertone, a veteran coroner's investigator who specializes in child deaths, first flagged the use of fentanyl at the time of Cole's 2013 autopsy and campaigned for years to persuade supervisors to reexamine the case. Her efforts resulted in the coroner's office amending Cole's death certificate in December to add fentanyl toxicity as a "significant cause" of his death.

"To me, this was not an academic question," Bertone said in an interview.

Bertone filed a whistle-blower retaliation lawsuit last month accusing the coroner's office of giving her less-desirable assignments as punishment for raising questions about Cole's death.

Cole's father, Jeremy Hartman, learned only recently of Bertone's allegations and the criminal investigation. (Cole's mother died in 2009.) Hartman and his wife, Elizabeth, who helped raise Cole and adopted him in 2012, declined to comment, saying through a relative that they wanted to wait until the outcome of the investigation to speak publicly.

A tragedy at home

Cole was born with fragile X syndrome, a genetic abnormality that causes intellectual and physical disabilities.

On July 31, 2013, his father came in from mowing the lawn and found Cole headfirst in a

FOR THE RECORD

JUN 15, 2017 | 12:15 PM

This article inadvertently omitted the date of Cole Hartman's death. It was Aug. 4, 2013, four days after he was injured.

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Cole was taken to a Santa Clarita hospital by ambulance and then flown by medical helicopter to UCLA later that night for more advanced care. In the pediatric intensive care unit, the Hartmans met Brill.

A professor emeritus of clinical anesthesiology and perioperative medicine at UCLA, Brill, 65, is a well-regarded expert in the treatment of seriously injured children. She helped write the state guidelines for pediatric critical care and spent much of her free time on medical missions to treat poor children in Africa, Asia and Latin America.

With other members of the medical team, she informed the Hartmans that a brain scan was "markedly abnormal" and suggested extensive damage from lack of oxygen, according to notes she made in Cole's chart.

The family "unanimously stated that they would prefer to withdraw support" and subsequently decided to donate his organs, Brill wrote.

Because Cole wasn't brain-dead, the organ retrieval was to occur after the ventilator was removed and his heart stopped beating on its own under a procedure known as donation after cardiac death, or DCD. This type of donation began in the U.S. in the mid-1990s and has become increasingly common in the last decade as the medical community tries to meet the overwhelming need for organ donors. DCD accounted for about 10% of deceased donors last year.

DCD comes with time pressures. Organs can begin deteriorating immediately, and some are not suitable for transplantation after 30 minutes.

Cole was removed from the ventilator at 10:40 a.m. as a transplant team waited outside. He did not stop breathing immediately. What happened next is unclear. The full coroner's report is sealed from public view pending the outcome of the police investigation, and UCLA declined to comment.

Easing the boy's pain

Bertone, who said she reviewed the full medical charts and autopsy records, alleged in her lawsuit that the boy "continued to gasp for air" and that Brill then gave him fentanyl "with the purpose of inducing his death." Bertone's suit and coroner's records state that the administered dose was 500 micrograms.

The suit does not identify Cole by name, but Bertone said in an interview that he was the patient referenced, which law enforcement officials confirmed.

Brill's lawyer declined to answer questions about the fentanyl allegation. In a portion of the chart reviewed by The Times, Brill does not mention fentanyl but wrote that "comfort care was provided throughout." "Comfort care" is a term commonly used for the use of medications such as opioids or sedatives to ease pain, experts said.

Medical experts said it is difficult to know for sure whether patients such as Cole in vegetative states are experiencing pain, but physicians prefer to err on the side of caution when withdrawing life support.

"It's generally thought you give enough medication to reassure everyone that the patient is comfortable, but not so much that it is actually the primary cause of death," said anesthesiologist Nicholas Sadovnikoff, co-director of the surgical intensive care unit and co-chair of the ethics committee at Brigham and Women's Hospital in Boston.

UCLA's policy for DCD allows the use of opioids "in doses that are clinically appropriate to prevent discomfort." Under the policy, "interventions intended to preserve organ function, but which may hasten death, are prohibited."

Cole's heart stopped at 10:59 a.m. and Brill declared death four minutes later, according to Brill's chart entry. Transplant surgeons removed Cole's kidneys and liver, according to coroner's records. The nonprofit that oversees organ donation in the L.A. region, OneLegacy, said in a statement that its transplant teams have no role in the care of living patients.

At the coroner's office, Cole's case was assigned to Bertone, the only full-time pediatric death investigator. A registered nurse, Bertone had investigated more than 2,500 cases, including numerous child abuse cases. Law enforcement officers across the county called on her frequently to interpret crime scenes and help interview distraught parents. Reviewing the medical records, Bertone said she had concerns about giving a boy who weighed 47 pounds that quantity of fentanyl.

Dispute inside coroner's office

Bertone told Dr. Mark Fajardo, then-chief medical examiner-coroner, she thought Cole died from fentanyl — making his death, in her estimation, a possible murder or manslaughter — and urged him to test a sample of the boy's blood, she alleges in the lawsuit.

Fajardo declined and ruled the cause of death was near-drowning. Fragile X syndrome was listed as another significant cause, according to coroner's records.

Bertone continued complaining to supervisors in person and in emails. Fajardo eventually ordered a blood test that showed fentanyl in Cole's system. Bertone pressed him to change the cause of Cole's death, but according to her lawsuit, Fajardo refused.

Fajardo, now Riverside County's chief forensic pathologist, said in an interview that Bertone's allegations left him "speechless," but he declined to comment further, citing the ongoing litigation.

After Fajardo left office last year, Bertone approached the then-interim chief medical examiner, Dr. Lakshmanan Sathyavagiswaran, who agreed to reopen the case. A pediatric toxicologist brought in as an expert by the coroner's office found that the fentanyl "was responsible for the death of this patient" and that the dose was "not consistent with a therapeutic dose for the management of pain and discomfort," according to excerpts of his findings quoted in a coroner's report.

As a result, Sathyavagiswaran changed Cole's death certificate in December to add fentanyl toxicity to the list of causes of death and asked for a law enforcement investigation. The manner of death — whether it was an accident or a homicide — remains listed as

"undetermined" pending the outcome of the investigation.

In what was believed to be the [first organ donation prosecution in the United States](#), the San Luis Obispo County district attorney accused a transplant doctor in 2007 of giving a DCD donor with a devastating neurological disease excessive amounts of morphine and a sedative in a bid to induce death within a half-hour window. The man continued breathing for seven hours, and the transplant was called off. A jury ultimately acquitted the physician, Dr. Hootan Roozrok, of wrongdoing.

'An exemplary career'

Bertone is no longer assigned full time to pediatric cases. In her lawsuit, she contends supervisors removed her from the work she loved in retaliation for challenging the handling of Cole's case. She is suing the county for damages that include the loss of overtime, on-call pay and a take-home car.

The county has yet to respond to the suit in court. A coroner's official said no one at the office would speak about Cole's case because of the suit and the ongoing police investigation.

Those who know Brill say she is deeply troubled by the accusations.

"This is someone who has really had an exemplary career," said Dr. Jean Lake, a pediatric neurologist at Miller Children's Hospital in Long Beach. She is "just so concerned that her ability, her skills, her intentions would be called into question."

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
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


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