

Artificial Nutrition, Hydration: Family Cannot Make Decision For Patient Who Is Conscious.

The Supreme Court of California heard from the lawyers for the patient's wife. She was the patient's legal guardian and asked the court to order the hospital not to replace the gastrostomal tube, but instead to allow the patient to expire.

The Court also heard from the attorneys for the hospital's ethics committee. They opposed the wife's petition. They and the patient's mother and sister had succeeded in getting the local judge to give the hospital permission to insert a nasogastric tube and to keep the patient alive pending further legal proceedings.

Sensing a landmark case, the Court also heard from lawyers representing a host of groups siding with the wife, including the Alliance of Catholic Health Care, the California Healthcare Association, the California Medical Association and the American Civil Liberties Union.

Lawyers also argued in favor of those against the decision to terminate life support, including the Ethics and Advocacy Task Force of the Nursing Home Action Group, the Coalition of Concerned Medical Professionals, the National Legal Center for the Medically Dependent & Disabled, the Brain Injury Association Center for Self-Determination, the National Council on Independent Living and the National Spinal Cord Injury Association.

The Court's Ruling/Conscious Patient

If the patient is conscious, not terminally ill, not comatose, not in a persistent vegetative state and the patient has not previously signed a medical directive or durable power of attorney for healthcare decisions expressing the patient's will for this situation, there must be clear and convincing evidence that the patient wants to die or that allowing the patient to die is in the patient's best interests

By calling for clear and convincing evidence the Court imposed the toughest burden of proof the law knows.

Unless those wishing the patient to die can meet that overwhelming legal burden of proof, caregivers must continue artificial nutrition and hydration and other measures to preserve the patient's life.

His wife could recount two pre-accident conversations where the patient said he would never want to live like a vegetable.

That is not enough. The real question is what his choice is now.

The patient is conscious, not comatose. His condition does not fit the medical or legal parameters of a persistent vegetative state.

The patient seems to be aware of his surroundings and able to recognize his caregivers and family.

Most important, the patient is able to communicate to a limited degree.

His personal physician asked him a series of yes/no questions and sensed meaningful answers from the patient. The physician and occupational therapist were the only ones who even tried to communicate with him.

When his physician asked him if he wanted to die he got no response from the patient.

The risk is very grave with an erroneous and irreversible decision to terminate life support.

The decision to re-insert the feeding tube and keep him alive can be reviewed if circumstances change.

SUPREME COURT OF CALIFORNIA, 2001.

The Patient's Condition

The patient's brain was badly injured in a single-vehicle rollover accident. He was in a coma and completely unresponsive for several months and then regained consciousness.

Over the next few months, with intensive rehab, he became able to do some simple tasks and could operate a power wheelchair, but communication was a problem area. The only way to get answers from him was to ask him to open or close his eyes, which worked inconsistently at best. His occupational therapist did not succeed with augmented communication and could not get him to use a language board.

His personal physician visited him after his wife started the legal proceedings to terminate hydration and nutrition. That is, she wanted a court order not to replace a feeding tube that needed replacing.

The physician testified he was able to sense deliberated answers to specific yes/no questions he posed to the patient. Was he in pain? Was he angry? Did he want to go back to bed? Did he want to be left alone? The doctor testified his patient did not respond one way or the other when he asked him if he wanted to die.

The Legal Backdrop

The Court reviewed the law in this area, only to say this was a completely different case than it had ever seen.

A mentally competent patient has the right to accept or decline medical treatment, even life-sustaining treatment.

If a patient is unconscious and has been medically certified to be in a persistent vegetative state, the courts accept what friends or family members indicate would be the patient's own wish.

Many patients have signed legal documents expressing their wishes. The courts give those documents great weight in deciding these cases.

In this case there was no strong evidence the patient himself in his current condition had expressed the will to die. Thus he had to be kept alive. **Conservatorship of Wendland, 28 P. 3d 151 (Cal., 2001).**