Persistent Vegetative State: Prominent Recent Case Has Not Changed The Legal Fundamentals.

We covered the Terri Schiavo case in June, 2001. See *Persistent Vegetative State: Court Looks For What The Patient Would Have Wanted.* Legal Eagle Eye Newsletter for the Nursing Profession (9)6, Jun. '01 page 6.

That back issue can be downloaded from our Internet website at http://www.nursinglaw.com/jun01ham7.pdf.

Of course we had no way to anticipate that the case would attract widespread media attention four years later.

In 2001 the District Court of Appeal of Florida followed the accepted standard legal rationale in these cases.

First the court determined on the basis of corroborated medical evidence that there was no possibility of recovery of brain function, in this case based upon a CT scan that showed that the cerebral cortex had atrophied and been replaced with cerebrospinal fluid. By law, that is a persistent vegetative state.

Then the court looked for a living will, durable power of attorney or advance directive that would set forth the patient's wishes in the event the patient came to experience irreversible brain dysfunction.

There was no such document in this case.

Public Law No. 109-3 gives the Federal courts jurisdiction specifically to consider and rule upon the arguments advanced by the parents of Theresa Marie Schiavo that life support should not be withdrawn.

If there would be reason to believe the parents will succeed with their arguments, the Federal court can stop withdrawal of life support pending a full legal proceeding to consider their arguments.

However, this new law does not change the legal criteria for determining whether and under what circumstances life support will be continued and when it will be withdrawn.

There is no basis for the court to believe that the previous State court rulings in this case are incorrect, and thus no basis for a Federal injunction.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
March 23, 2005

Then the court looked to those persons close to the patient to determine what the patient would have wanted. The court accepted the husband's testimony she would not have wanted to remain indefinitely on life support but would prefer to be allowed to expire. The court discounted the parents' testimony that the patient herself would have wanted to be kept alive under these circumstances.

US Court of Appeals Finds No Grounds To Disturb State Court Ruling

The US Circuit Court of Appeals for the Eleventh Circuit expressed grave doubts as to the constitutionality of Public Law 109-3 (3/21/05) which applies only to the Schiavo case. However, by literally interpreting this law the court found a basis for a definitive ruling without having to tread upon the Constitutional issue.

Public Law 109-3 gave Federal courts jurisdiction to intervene in this one particular case if the merits of the parents' legal arguments so warranted. The Eleventh Circuit ruled the parents' legal arguments lacked merit, that is, there was no substantial basis to disturb the fundamental wisdom of the Florida State courts' previous rulings.

Thus the State court's decision finally to permit withdrawal of life support, based on the husband's testimony that is what the patient would have wanted, would be allowed to stand.

Public Law 109-3 and the courts' rulings do not change basic existing law on the subject of persistent vegetative state, advance directives and surrogate decision making. **Schindler v. Schiavo, __ F. 3d __, 2005 WL 648897 (11th Cir., March 23, 2005).**

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