

# Gastrostomic Feeding: Court Upholds Patient's Right To Refuse Surgical Insertion Of Tube.

**A** ninety-six-year-old patient who resided in a hospital was the subject of a court petition by her son to be appointed her legal guardian. The son wanted legal authority to inform the hospital, on behalf of his mother, that she wished to decline the hospital's request for consent to surgical insertion of a gastrostomic feeding tube.

The court appointed a court-appointed attorney to act as the mother's legal representative relative to the son's petition to be named as the mother's guardian. The court-appointed attorney stated to the court, as the mother's attorney, fully apprised of the son's reason for wanting to be guardian, that the son should be appointed and given the legal powers of guardian for his mother, so that the son could intervene to prevent the insertion of a gastric feeding tube.

However, the state attorney general stepped in and argued that the mother was not competent to grant or withhold surgical consent. The attorney general conceded that if the patient is legally competent, her decision to decline to give informed surgical consent to the hospital to insert a gastrostomy tube would decide the issue once and for all, even if she died as a result. However, the attorney general argued before the court that this patient was not legally competent. Thus the court, according to the attorney general, should base its decision on what the court believes at the time is in the best interests of the patient, regardless of what the patient herself might have wished to happen if she were able to make and communicate her decision herself. The attorney general went further to argue that the tube was necessary to keep the patient alive, as she was not obtaining sufficient oral nutrition to keep herself or to be kept alive.

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***Two psychiatrists who questioned the 96-year-old patient on behalf of the hospital concluded she was incompetent to give informed consent at that time to the withholding of a feeding tube.***

***The patient suffered from depression, organic brain syndrome and/or Alzheimer's, resulting in diminished cognition and frequent confusion.***

***The decision to decline the insertion of a gastric feeding tube would, under the circumstances, place the patient in grave danger of imminent death.***

***According to the psychiatrists she was unable to recognize the consequences of her decision.***

***However, the patient had for some years clearly maintained that she never wanted a feeding tube. She had explicitly stated in her living will some years earlier her clear directive that no feeding tube be inserted.***

***This patient's decision to decline a feeding tube, according to the court, was not irrational or uninformed, and would be given effect.***

COURT OF CHANCERY OF DELAWARE,  
1994.

The battle lines were drawn for the court to make a choice between what the law refers to as the "best interests" of the patient, versus the "substituted judgment" of a "surrogate" decision-maker.

The Delaware Chancery Court in this case took a compromise position. It ruled that the court's duty to uphold the best interests of the person requires it to replicate the health-care decisions the person himself or herself would make in the circumstances presented, if the person did not suffer from diminished mental capacity.

The court stated, that in considering the best interests of the person, it is elementary that sustaining life itself is an interest of very great value. But life itself, according to the court, is not the only value that any of us hold. We are concerned to advance chosen values of dignity as well as the ability to experience the joys and benefits of living.

Because our biologic life is not our only value, according to the court, in considering the interests of an incompetent person, biologic life need not be the exclusive focus of the person's guardian or of the court to which the guardian must answer. Thus, based on the court's analysis, in an appropriate case the court may authorize a guardian to discontinue life supporting medical treatment if, after hearing the evidence, it is determined to be in the best interests of the person to do so. Less drastic, but no less permissible are good faith decisions to decline on behalf of the person extraordinary medical treatments, including nutrition and hydration when they entail invasive procedures.

In meeting the best interest standard for health care decisions a substituted decision maker should consider the views of the person herself. Thus the court let the son decline on the mother's behalf the hospital's request for surgical consent to insertion of a feeding tube. **Matter of Anna M. Gordy, 658 A. 2d 613 (1994).**