

Persistent Vegetative State: Court Looks For What The Patient Would Have Wanted.

When the patient had a heart attack at age twenty-seven as a result of a potassium imbalance she experienced a prolonged period of brain anoxia that left her in a persistent vegetative state.

For ten years she was living in a nursing home, breathing on her own but needing artificial hydration and tube feeding. She was cared for carefully but had developed severe limb contractures.

A recent CAT scan showed most of her cerebral cortex had atrophied and was replaced with cerebrospinal fluid. The District Court of Appeal of Florida was satisfied there was no medical possibility of recovery.

The Family Dispute

There was no living will, power of attorney or other advance directive.

The husband went to the local county circuit court and got permission to discontinue life support. The circuit court ruled in his favor over the parents' objections. The parents appealed the decision.

Patient's Assets

The patient owned substantial investment assets which were being used to pay for her nursing home care, money obtained in a medical malpractice settlement.

If her husband stayed married to her until she died, he would inherit it all. If he divorced her before she died, her parents would inherit it all.

The court said in these cases they sometimes see a potential for financial gain on one side or the other. But they take the relatives' arguments at face value and do not rule out one side or the other based on possible ulterior motives.

The Patient's Wishes

The ultimate question is what the patient would have wanted. The court hears from those who knew the patient best.

It is not relevant what a relative, friend or caregiver thinks is best for the patient, like being kept alive in the hope of a miracle or a medical breakthrough.

The court accepted the husband's testimony the patient would not have wanted

Would the patient choose to continue constant nursing care and the life support tubes in the hope that a miracle will recreate her missing brain tissue?

Or would she permit a natural death to take its course so that her family and loved ones can continue with their lives?

DISTRICT COURT OF APPEAL OF FLORIDA, 2001.

her assets used to keep her alive pointlessly, when her assets could be given to charity and used for something that might make a difference.

The court acknowledged that the patient had no testamentary will leaving her property to charity and that the husband inherits all the wife's separate property when the wife dies without a will under the law of Florida. After the patient died her husband could keep all the money, and no court could tell him otherwise, even if the reason for discontinuing life support and letting his wife expire was to let her assets pass to charity.

None of that mattered. It is all irrelevant, the court said, because in many of these cases some person very close to the patient, who can honestly say what the patient would have wanted, also stands to profit from how the court decides the case.

The Court's Ruling

The court said it was bound to follow the patient's wishes, as best as the patient's wishes could be determined without a living will or medical advance directive.

The patient's best interest is irrelevant and is not the correct legal focus, the court ruled.

The court upheld the decision to discontinue life support. Guardianship of Schiavo, 780 So. 2d 176 (Fla. App., 2001).

IM Kenalog Injection: Court Finds Medical Assistant Was Not Negligent.

The parents sued a medical clinic after their thirteen year-old daughter had complications after getting a Kenalog injection ordered by a physician for allergy symptoms.

The parents' lawyer argued two points. The medical assistant who gave the injection was not licensed. That was true. Next, the shot must not have been given deep in the gluteal muscles and therefore was not fully absorbed. That was pure speculation and conjecture, according to the Supreme Court of Wyoming.

The medical assistant was not a licensed nurse, but when a medical assistant performs a task that is supposed to be done by a licensed nurse a medical assistant is held to the same professional standards as a licensed nurse.

That being said, there was no evidence the injection was given improperly, so complications or not there is no basis for this lawsuit.

SUPREME COURT OF WYOMING, 2001.

According to the court, the law holds non-licensed personnel to the professional standards of the nursing profession when they perform nursing tasks for which they are not licensed.

For a licensed nurse, however, there must be proof that an injection was given improperly. The law simply will not reason backward from an adverse reaction and say that negligence must have occurred. Beavis v. Campbell County Memorial Hospital, 20 P. 3d 508 (Wyo., 2001).