Premature Newborn Kept Alive, Parents' Lawsuit Against Hospital Thrown Out (Cont.)

(Continued from page 1)

able to be asked for consent and given the opportunity to refuse. The law refers to this as the emergency exception to the strict rule requiring patient consent.

Advance Directives / Right to Die
Competent Adult Patients

A competent adult has the right to sign an advance directive or durable power of attorney for healthcare decisions, stating that no extraordinary life-saving measures are to be taken once he or she has crossed the threshold of terminal illness with death expected imminently.

Even without having signed such a document, a competent and lucid adult can simply tell his or her providers to cease such measures and allow a natural death to take its course.

If an adult patient is not competent and lucid and has not already signed a medical directive, there must be medical certification that the patient is imminently terminal before healthcare providers can follow the wishes of the family or a close friend or other surrogate decision-maker to allow the patient to expire naturally.

The court in this case noted in Texas there must be a written certification from a physician at this juncture. In other states more than one physician may be required, and the physician or physicians may have to do a physical exam before making their written certifications.

Some states allow the patient or the heirs to sue when a patient is kept alive and heroic measures are taken in the face of an expressed wish from the patient, an advance directive or a surrogate's decision to allow the patient to die naturally.

Parents' Right To Allow
Child's Natural Death

Parents have the same basic right with respect to their children. The most common scenario is newborns who are seriously premature, acephalic, etc.

However, for a parent to allow a child to expire, there must be medical certification as to the child's terminal status. That was not available in this case. In fact, the neonatologist on duty when the child was born believed the child was viable, and the child in fact was viable. That meant the parents had no legal right to refuse treatment as a means of letting the child expire, and the hospital was not in the wrong for providing treatment against the parents' wishes.

Parents' Obligation To
Provide Health Care

Parents not only have the right to control their children's healthcare, they have a duty to see that it is provided. It is a criminal offense not to do so.

The government has a compelling interest in seeing that children are cared for properly, notwithstanding the wishes of the parents. When a parent neglects to provide for a child's needs, child protection authorities can step in.

It becomes more complicated when a parent refuses medical treatment for a child. An example of this scenario is when a parent refuses on religious grounds to allow a child to have a surgical procedure or blood transfusion. Child protection authorities may step in and petition for a court order to override the parents' wishes. The court must balance the best interests of the child versus the parents' constitutional rights.

When there is time for deliberation, healthcare providers do not have the right to override the parents' wishes on their own initiative, nor do they have the right to file a petition in court, the court said. It is their responsibility and their only option to notify the child protection authorities and ask them to come into the case.

Change of Physicians

One justice of the Court of Appeals wanted the court to rule that the parents should have been given a chance to select another physician who would have seen to their wishes, believing that is what is commonly done in these cases, even if it is not openly talked about. **HCA, Inc. v. Miller, 36 S.W. 3d 187 (Tex. App., 2000).**

No Code Order: Wrongful Death Lawsuit Dismissed.

After his eighty-four year-old father died in a nursing home, the son was appointed probate administrator of the estate. He filed a wrongful death lawsuit against the nursing home as the son of the deceased and as the probate administrator.

He claimed his father was improperly classified as a No Code patient by a physician at the nursing home. He objected that CPR was not tried as his father expired and insisted that his father would have survived and still be alive if CPR had been performed by the nursing home's staff.

A person who files a civil negligence lawsuit must prove the defendant committed a negligent act.

There must also be proof the negligent act was the factor that caused harm.

Proof is required. Speculation and conjecture are not enough.

SUPREME COURT OF NEBRASKA, 2001.

The Supreme Court of Nebraska threw out the case. True, the son did have a valid durable power of attorney from his father allowing the son to instruct the nursing home not to classify him as a No Code patient but instead to try CPR.

However, according to the court, there was no proof the letter was ever sent or received the son claimed after the fact he wrote to the nursing home when he saw a No Code entry in his father's chart while visiting him before he died.

The son also offered no proof of the circumstances of death, that is, he had no medical proof his father would not have died but would have survived if CPR had been tried. **King v. Crowell Memorial Home, 622 N.W. 2d 588 (Neb., 2001).**