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TERRY SCHIAVO – WHAT WE HAVE LEARNED

By Thomas D. Begley, Jr., Esquire

The case of Terri Schiavo is a tragedy for Terri, her husband and her parents. Unfortunately, it has become a media circus involving a clash of ideology rather than a private medical crisis for Terri and her family. Reasonable people can certainly disagree as to whether Terri is in a persistent vegetative state and even whether Michael Schiavo or the Schindlers should be in charge of Terri's decision-making. However, the involvement of Jeb Bush, the Florida Legislature, Jesse Jackson and the United States Congress transformed this private nightmare into a cause. Poor Terri's plight has become secondary to a clash of ideology. The head of Judicial Watch stated on television that he hoped that Terri lived, because they could "use" her. The current situation is a terrible emotional drain on Terri's parents, her husband and those who love them.

A similar horrible case took place in Ohio several years ago when Governor John Ashcroft refused to let Joseph Cruzan, father of Nancy Cruzan, withdraw Nancy from life support. After a bitter legal battle over many years Joseph Cruzan prevailed and the Supreme Court of the United State authorized the withdrawal of life support. That tragedy took such an emotional toll that shortly afterward Joseph Cruzan committed suicide.

In the Schiavo case and the Cruzan case there are common threads. Both were young women and neither had a Living Will. Every state now has some form of Living Will legislation authorizing persons to deal in advance with end-of-life decision-making.

These instruments do not apply unless the person is brain dead, in a persistent vegetative state, in a terminal condition or the burdens of the treatment outweigh the benefits. They only apply if the person is unconscious and cannot make decisions and verbalize them. They only apply if there is no reasonable hope of recovery or regaining a meaningful quality of life.

There are essentially four ways to handle end-of-life decision-making:

- *Living Will.* A Living Will or Advanced Directive gives the medical provider instructions as to what type of care the patient wants and what they don't want. The document should be very specific. Does the person want a ventilator, invasive surgery, blood transfusions, a feeding tube or other forms of life-sustaining treatment? Typically the answer is "no," except in the case of a feeding tube the person's religious background may dictate that a feeding tube not be withheld or withdrawn.

- *Treat Aggressively.* It is possible to have a Living Will instructing the health care provider to treat the person aggressively no matter how hopeless the situation. These are seldom used, but everyone has the right to make this decision for himself or herself.
- *Medical Power of Attorney.* Many older people don't want to think about dying and don't want to make medical decisions, but would prefer that their spouse or children make those decisions for them. A Medical Power of Attorney would not contain any instructions as to treatment, but would leave the decision to the health care representative. A Living Will and Medical Power of Attorney are often combined.
- *Do Nothing.* A person may elect to do nothing, if the individual does not want to think about dying and the consequences of signing a Living Will. Unfortunately, the problem doesn't go away. The result in these situations is a family member may go to court seeking to become appointed a medical guardian to make medical decisions. While the entire family may agree that withdrawal of life support is appropriate, an ideologically driven physician, hospital, governor or interest group may intervene.

The debate over Schiavo will be healthy if more people take end-of-life decision-making into their own hands rather than leave it to the uncertainty of ideologists.

Persons already having Advanced Directives or Living Wills should be sure that they contain provisions relating to health care privacy (HIPAA). Any Living Will made more than one year is not likely to contain those provisions since HIPAA did not become effective until then.

Tom Begley spoke at the Pennsylvania Bar Institute in Philadelphia, Pennsylvania on two topics: *Administering Self-Settled Special Needs Trusts and Ethics.*



Begley & Bookbinder, P.C. is a law firm that specializes in Elder & Disabilities Law. We are based in Moorestown, NJ, with offices in Stone Harbor & Lawrenceville.

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