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LEGAL BRIEFS

This regular feature of **news@vhaethics** provides concise, up-to-date information on legal and regulatory issues in health care ethics. The current article clarifies U.S. law and VHA policy on withholding or withdrawing fluid and nutrition. The article is intended to correct a statement about VHA policy that appeared in an Editor's note of the Summer 1999 issue of **VHA Ethics Bulletin**. We regret any misunderstanding this error may have caused.

Must Food and Fluid Always Be Provided?

By Angela M. Prudhomme, J.D. Office of the General Counsel

In U.S. law, the right of a competent patient to refuse a feeding tube or other artificially supplied nutrition and hydration is well settled. ([Bouvia](#)). The right of a surrogate to refuse artificial fluid or nutrition on behalf of a patient who lacks decision-making capacity is also widely accepted ([Barber](#)). The courts have consistently held that "artificial feedings, such as nasogastric tubes, gastrostomies, and intravenous infusions, are significantly different from bottle-feeding or spoonfeeding - they are medical procedures" that a surrogate can refuse on a patient's behalf ([Conroy](#)).

VA policy holds that patients have the right to refuse any procedure, even at the risk of death ([VHA Handbook 1004.1](#)). If a patient lacks capacity, consent to forego artificial feeding must be obtained from an authorized surrogate ([VHA Handbook 1004.2](#)). Neither U.S. law nor VA policy allows the withholding of food and fluids from a patient who is willing and able to eat or drink.

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**Court of Appeal, Second District, Division 2, California.
Elizabeth BOUVIA, Petitioner, v. SUPERIOR COURT of the State of California For the County of Los Angeles, Respondent. Harry GLENCHUR, M.D., Individually and as Medical Director, High Desert Hospital; R. Navamani, M.D., as Staff Physician, High Desert Hospital; A.R. Fleischman, as Administrator, High Desert Hospital; Roger Hughes, as Assistant Administrator, High Desert Hospital, High Desert Hospital, a Health Care Facility Operated by the Department of Health Services of the County of Los Angeles; the County of Los Angeles; and Does I through XX, inclusive, Real Parties in Interest. Civ. B019134.**

April 16, 1986.
Review Denied June 5, 1986.

Patient in public hospital filed petition for writ of mandamus and other extraordinary relief following denial of her request for preliminary injunction requiring removal of nasogastric tube inserted and maintained against her will and without her consent by physicians for purpose of keeping her alive through involuntary forced feeding and that hospital and doctors be prohibited from using any other similar procedures. The Court of Appeal, Beach, J., held that: (1) fact that patient was physically able to tolerate nasogastric tube did not render mandamus inappropriate; (2) patient who was mentally competent and understood risks involved had right to refuse treatment; and (3) State's interest in preserving life did not outweigh patient's right to refuse treatment.

Writ granted.

Compton, J., filed concurring opinion.

Court of Appeal, Second District, Division 2, California.

Neil Leonard BARBER, Petitioner, v. SUPERIOR COURT OF the STATE OF CALIFORNIA for the COUNTY OF LOS ANGELES, Respondent. PEOPLE of the State of California, Real Party in Interest.

Robert Joseph NEJDL, Petitioner, v. SUPERIOR COURT OF the STATE OF CALIFORNIA for the COUNTY OF LOS ANGELES, Respondent. PEOPLE of the State of California, Real Party in Interest. Civ. 69350, Civ. 69351.

Oct. 12, 1983.

Two medical doctors charged with crimes of murder and conspiracy to commit murder, based on their acceding to requests of patient's family to discontinue patient's life support equipment and intravenous tubes, filed writ of prohibition. The Court of Appeal, Compton, J., held that: (1) Natural Death Act which permits adult individual to execute, in advance, directive for withholding or withdrawing of life-sustaining procedures in event that he or she later suffers terminal condition does not represent exclusive basis for terminating life support equipment nor is diagnosis of "brain dead" condition precedent to cessation of such treatment; (2) failure to institute guardianship proceedings for patient did not make doctors' conduct unlawful; and (3) doctors' omission to continue treatment, though intentional and with knowledge that patient would die, was not unlawful failure to perform legal duty.

Writ issued.

Supreme Court of New Jersey.
In the Matter of Claire C. CONROY.

Argued March 19, 1984.

Decided Jan. 17, 1985.

SYNOPSIS

Guardian of incompetent nursing home patient sought permission to remove nasogastric feeding tube, the primary conduit for nutrients, from the patient, an 84-year-old bedridden woman with serious and irreversible physical and mental impairments and a limited life expectancy. The application was opposed by the patient's guardian ad litem. The Superior Court, Chancery Division, Essex County, 188 N.J.Super. 523, 457 A.2d 1232, granted permission and guardian appealed. The Superior Court, Appellate Division, 190 N.J.Super. 453, 464 A.2d 303, reversed. The Supreme Court, Schreiber, J., held that: (1) death of the patient did not moot the case because it presented a substantial issue capable of repetition while evading review; (2) competent adult generally has the right to refuse medical treatment and does not lose that right upon incompetency; (3) surrogate decision maker for incompetent may direct the withdrawal or withholding of life-sustaining treatment under certain circumstances if certain procedures are followed; (4) notification must be given to office of the ombudsman for the institutionalized elderly; (5) there must be a determination that incompetent nursing home patient is incompetent to make the decision in question; and (6) evidence in the instant case did not meet any of the three tests for termination of life sustaining treatment.

Reversed.

Handler, J., filed an opinion concurring in part and dissenting in part.