

# Death by Withdrawal of Nutrition and Hydration

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On October 15, 2003, in Pinnelas Park, Florida, the feeding tube of Terri Schiavo, a 33 year old severely brain damaged woman was removed by court order after a 10 year legal battle between her husband and her parents (Stacy, 2003). The expectation was that she would die in a week or ten days. The parents of the patient wanted to care for their daughter and keep her alive in the hospice where she had lived for several years. Her husband said she would rather die. The patient's sister, Suzanne, called the feeding tube removal "judicial homicide." It is not clear whether the patient had written a living will expressing her wishes not to live in a chronic vegetative state or had so stated orally to her husband Michael, who claimed that he was carrying out his wife's wishes that she not be kept alive artificially. This seems to represent clear and convincing evidence of Mrs. Schiavo's wishes, thus allowing the court to order the removal of the feeding tube. Complicating this case is a conflict of interest or bias on the part of the husband because he is engaged to another woman and they have a child together. The family also alleges that the husband Michael abused his wife, accusations which have not been substantiated. Michael Schiavo also refused to divorce his wife, fearing that his wife's parents would ignore her wishes to die if they became her guardians. The legislature in the state of Florida quickly passed a law granting the Governor the power to override the court, which ordered the removal of the feeding tube. Governor Jeb Bush signed the legislation and promptly overruled the court and ordered the feeding tube to be reinserted. At the time of my writing this essay, the dénouement or outcome of this case has not yet occurred. It is expected to go through several appeals before a final determination is made in this unusual right to die case of Terri Schiavo.

Many similar right to die cases have been discussed and debated over the past three decades, one of the most famous being the case of Nancy Cruzan in Missouri. This unfortunate young woman was in a persistent vegetative state for many years in an institution in Missouri, being kept alive with a feeding tube. Her parents petitioned the Supreme Court in Missouri to allow removal of the feeding tube. The case eventually was heard by the United States Supreme Court, which sent it back to the Missouri Supreme Court. After many years of Nancy being in a permanent coma, some of her friends came forward and testified that she told them she would not

wish to live hooked up to tubes. On the basis of this clear and convincing evidence, the Missouri Court allowed the removal of the feeding tube. Thirteen days later, Nancy Cruzan died of starvation and dehydration. Many people argued that the withdrawal of the tube was a merciful act, which allowed the patient to die in peace and dignity. Others argued that the removal of the tube represented active euthanasia, which has not yet been universally sanctioned.

In Holland, active euthanasia under certain circumstances is legally permissible. However, opponents of the law point out that some physicians are euthanizing patients without their consent because of "poor quality of life" such as severely handicapped newborns. This was not the original intention of the Dutch legislation legalizing euthanasia. In the United States several referenda in several states proposing legalization of euthanasia have been defeated. Only in the state of Oregon is physician-assisted suicide, but not active euthanasia, legal. The main reason for patients requesting physician-assisted suicide is not pain and suffering but the desire to be in control of one's own destiny.

In the Nancy Cruzan Case, not everybody defended the withdrawal of her feeding tube as a merciful act. A vocal minority considered the withdrawal of her feeding tube an act of murder or active euthanasia, since it was the direct and proximate cause of her death thirteen days later. This opposing minority equates the removal of Nancy Cruzan's feeding tube with shooting her in the head. The headshot would kill her instantaneously and the feeding tube removal resulted in her death two weeks later. Both acts, however, are the direct and proximate cause of her death and should be considered legal murder without justification. Neither act is merciful but directly causing the death of a person is legal murder. In fact, some years ago in California, two physicians were indicted for murder for withdrawing the feeding tube of a similar terminally ill, non-curable patient. The charges were dismissed and the physicians were exonerated. One can thus argue both ways, the removal of a feeding tube from a persistent vegetative state patient in persistent coma or from a terminal patient with Alzheimer's Disease who cannot bring up secretions and suffers from repeated episodes of pneumonia can be considered a merciful act in ending the suffering of the patient. But was Nancy Cruzan really suffering? Did she have any physical pain?

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Was she sentient at all to feel mental pain? No one knows. Certainly her parents, relatives, and friends were suffering as they watched her in this condition. The doctors, nurses, and other caregivers may have suffered emotionally in caring for this poor unfortunate patient. The state of Missouri was suffering since it cost them \$22,000 per year to keep Nancy Cruzan in a nursing home. But was Nancy herself suffering? Did she ever clearly enunciate her autonomous decision not to be kept alive if she were ever in a condition such as a permanent coma? No one knows. Therefore some ethicists and some theologians can argue persuasively that the death of Nancy Cruzan was an act of moral or even legal murder or at least legal active euthanasia. It is not ethically or religiously allowed to purchase the relief of suffering of other people at the cost of taking the life of the patient.

Perhaps the first case involving the removal or withdrawal of life support medical therapy is the New Jersey case of Karen Ann Quinlan, another unfortunate young woman in a persistent vegetative state. The parents of the patient petitioned the courts in New Jersey to remove the respirator from their daughter so she could die in peace and dignity. They convinced the Supreme Court of the State of New Jersey to allow the removal of the respirator based on the supposition that would have been the patient's wish. In 1976, the respirator was removed in this landmark case. Surprisingly, the patient continued to breathe on her own without the respirator but remained in her vegetative state of persistent coma. When Mr. Quinlan, the patient's father, was asked at that time, "How about removing her feeding tube?" his answer was, "Oh no, that is her life." He obviously felt it was morally wrong to end her life by withdrawing nutrition and hydration. Every human being is entitled to food and water, no matter how close to death they are. Yet, Mr. Quinlan in 1976 would have condoned his daughter's death by the removal of the respirator by seemingly paradoxical logic. Society in 1976 was not yet ready to take the leap from removing a respirator to the withholding or withdrawing of nutrition and hydration.

Since then, many famous cases have occurred. In Florida, the Court of Appeals ruled that the feeding tube of Helen Corbett could be removed because the right to refuse treatment is protected by both state and federal constitutions. In California, Elizabeth Bouvia, who was alert and competent, won the right to reject feeding by nasogastric tube. In Massachusetts, Paul Brophy died after his feeding tube was stopped by court order. In New Jersey, the Supreme Court, exactly 10 years after the Quinlan case, allowed the removal of a feeding tube from Claire Conroy, determining that such a device should be viewed in the same as other medical and nursing treatments. The same court ordered a nursing home to participate against its will in the removal of the feeding tube of Nancy Cellen Jobes. In New York, an Appellate Court, in the Case of *Delio v. Westchester County Medical Center*, decided that the withdrawal or

withholding of nutrition and hydration by artificial means (i.e. feeding tube or intravenously) should be evaluated in the same manner as any other medical procedure including the use of a respirator or other form of life support equipment. The court also concluded that where there is clear and convincing evidence that a patient is in a persistent vegetative state, and not necessarily terminally ill, and has expressed his or her prior wishes to die with dignity and not be sustained by artificial means, these wishes must be given full consideration. Many other similar court cases have come to similar conclusions.

Thus, an extensive medical literature has emerged in the past two decades supporting the notion that feeding tubes and intravenous lines constitute medical therapy and when not indicated in a given patient, may be withheld or withdrawn. Prior to that time, perception of society as well as the medical profession was that nutrition and hydration by any route or portal of entry are not medical treatments but supportive care no different than skin care, grooming, or bowel and bladder care. Feeding tubes and intravenous lines were considered simple conduits for food and water for a patient who is unable to eat or drink on their own. Food and fluids are universal needs whereas specific medical or surgical interventions are not. Mr. Quinlan made a sharp distinction between the provision of nutrition and the removal of the respirator from his daughter in 1976, when he responded to the question about removing her feeding tube with a phrase, "Oh no, that is her nourishment."

In a landmark statement in March 1986, the American Medical Association's (AMA) Council on Ethical and Judicial affairs announced that, in certain limited circumstances life prolonging medical treatment, including "medication and artificially or technologically applied respiration, nutrition or hydration" may be stopped or withheld. There is today nearly universal support in the medical, legal, ethical, and lay professions for this AMA position. A small minority at the AMA objected, saying, "This is a grievous error because death by starvation, dehydration, volume depletion, or a combination of these is not death from the underlying disease processes and could be considered euthanasia." Others in the minority argued that this development bears the seeds of a great potential abuse since pulling the tube or pulling the plug are the equivalent of euthanasia which is illegal in the United States. I thus interpret the differences of opinion to hinge on whether feeding tubes and hydration are medical treatments and when appropriate may be ethically and legally withheld or withdrawn. Alternately, feeding tubes and hydration are part and parcel of supportive care, such as turning the patient, singing, reading, talking or just listening to the patient who is dying. These general supportive measures should not be abandoned if doing so would hasten the patient's death.

In the Judas-Christian system of ethics and values, human

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life is considered to be of infinite and inestimable value. Therefore, one could argue philosophically that every moment of a person's life is also of supreme value. Furthermore, a person's life and body are not his own property to do with as he wishes. The proprietor of all life including human life is none other than God Himself.

My colleague, friend, mentor, and consultant, Rabbi J. David Bleich, visiting Professor of Law at Yeshiva University's Cardoza Law School, told me personal privilege as well as personal responsibility with regard to the human body and human life are similar to the privilege and responsibility of a bailee with regard to a bailment with which he has been entrusted (Bleich, 2002). It is the duty of a bailee who has accepted an object of value for safekeeping to safeguard the bailment and to return it to its rightful owner upon demand. Man is but a steward over his human body and is charged with its preservation. He must abide by the limitations placed upon his rights of use and enjoyment (Bleich, 2002).

Life with suffering is regarded as being, in many cases, preferable to termination of life and with it elimination of suffering. Life accompanied by pain may be preferable to death. It may serve as atonement for the dying person. It may serve to stimulate feelings of compassion and altruism among the family members and caregivers or even the recognition of their own mortality. These feelings may facilitate their own fulfillment of the divine plan of creation. Even when the life of a person on his deathbed seems to be devoid of benefit, meaning or purpose, the patient retains unique human value by virtue of the role he plays in providing an opportunity of love and compassion. Human life represents a purpose in and of itself (i.e., sheer human existence is endowed with moral value).

Many people may disagree with Rabbi Bleich's view, which is based on theological ethics and teachings, which may at times appear to be rigorous, and fail to achieve acceptance in a secular society (Bleich, 2002). Nevertheless, concludes Rabbi Bleich (2002), an understanding and appreciation of these traditions may result in the tempering of some of the rather extreme views about end-of-life issues such as active euthanasia and physician assisted suicide that are currently in vogue. If some doubt is engendered in the minds of physicians and other caregivers tending to the needs of the terminally ill, they may take to heart the fact that if they are to err, better to err on the side of life.

My own view is that even if the courts and secular ethicists sanction the withholding or withdrawal of fluids and nutrition from the terminally ill and from chronic vegetative state patients, what is legal and socially acceptable is not always moral and merciful. The patient's or family's right of starving or dehydrating the patient to death does not mean that starvation and/or dehydration are right. The medical literature is divided

about whether or not death by starvation and/or dehydration is more painful and induces more suffering than death with full nutrition and hydration. Finally, legal permissibility by court order to induce death by removing or withholding food and hydration is not necessarily synonymous with moral license to do so.

In the October 20<sup>th</sup>, 2003 issue of the conservative magazine, *The Weekly Standard*, Wesley J. Smith, in an article entitled "No Mercy in Florida," discusses the case of Terri Schiavo and what it portends. He categorically states that this case illustrates how utterly vulnerable people with profound cognitive disabilities have become in this country. Not only are many routinely dehydrated to death, both the conscious and the unconscious, but often the people making decisions to stop food and water, like Michael Schiavo in this case, have glaring conflicts of interest. No one would argue that under the current universally accepted patient autonomy principle, had Terri Schiavo orally or in writing previously expressed her wish to have nutrition and hydration withheld or withdrawn if she is ever in a persistent vegetative state or permanent coma, her wishes would be honored without debate.

Wesley Smith (2003) in his article in *The Weekly Standard* quotes the most recent issue of the prestigious medical journal, *Critical Care Medicine*. The authors of an article in that journal, Robert D. Troug and Walter M. Robinson (2003) from Harvard Medical School, urge the adoption of an even more radical policy. They propose the discarding of the "dead donor rule" which requires that vital organ donors be dead before their organs can be procured for transplantation. Troug and Robinson state that "we propose that individuals who desire to donate their organs and who are either neurologically devastated or imminently dying should be allowed to donate their organs without first being declared dead." Such patients may still be considered alive if one refuses to accept brain death as a valid definition of death, Smith (2003) asserts that doctors should only be permitted to procure organs from donors who have been declared dead in the traditional manner because their hearts have ceased beating without hope of restarting. He then briefly discusses the issue of futile therapy and makes the condemning accusation that "many practitioners of bioethics, medicine and law no longer believe that people like Terri Schiavo are fully human." I strongly disagree with his unsubstantiated statement which I believe goes too far. Smith (2003) concludes his essay by asserting "A nation is judged by the way it heals its most vulnerable citizens." Therefore, there is a lot riding on the Schiavo case.

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**Commentary**

Commentary presents an author's opinion, explanation, or criticism of a specific topic within science, medicine, etc. Commentary can be submitted by electronic mail (ejbm@aecom.yu.edu) or regular mail (1300 Morris Park Avenue; Forchheimer Building, Room 306; Bronx, New York 10461). Receipt of Commentary is acknowledged. Commentary is not peer reviewed and represents the viewpoint of the author on a particular issue or topic. Commentary is edited for space and clarity.