THE ROLE OF LAW IN END-OF-LIFE DECISIONS

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BACKGROUND

• 1975-76: Karen Quinlan Case (NJ)

• 1990: Nancy Cruzan Case – US Supreme Court
WHAT HAPPENED 1975-1990?

• Development of legal consensus about end-of-life decision making

• Mostly state courts: ~ 125 cases
  ▪ 25 states and DC

• State legislatures: Advance Directive Statutes
Substantive Rights

- Competent individuals:
  - Virtually absolute RRT

- Incompetent individuals:
  - Same rights
  - Different implementation
CONSENSUS KEY POINTS - 2

Decision-Making Procedures

• Clinical, not judicial, decision-making
• Families implement patients’ wishes
  ▪ Living wills
  ▪ Conversations
  ▪ Knowledge of patient
  ▪ HCPOAs
WHAT TO DO WHEN NO EVIDENCE OF PATIENT’S WISHES?

“Close family members are usually the most knowledgeable about the patient’s preferences, goals, and values; they have an understanding of the nuances of our personality that set us apart as individuals. . . . ‘Our experience informs us that family members are generally most concerned with the welfare of a patient.’”

Pa Sup Ct In re Fiori, quoting NJ Sup Ct In re Jobes
LEGAL AUTHORITY FOR FAMILIES TO DECIDE

- State legislation: ~2/3 of states
- Explicit case law in others
- Common-law tradition in all
THE NEXT 15 YEARS:
1990-2005

- Relative legal inactivity about end-of-life decisions
- Clinical consolidation
- Legal attention focused on actively hastening death (legalizing, banning, regulating)
- Schiavo 2005
  - Irresolvable family dispute
IS THE CONSENSUS WORKING?

YES:

Empirical evidence:
- \( \sim 900,000 \) EOL decisions each year
- 99.95% without going to court
- 1 or 2 high-profile cases per decade

NO:

Schiavo
IN THE WAKE OF SCHIAVO, WHAT SHOULD WE DO?

- Nothing or not-too-much (Florida law was adequate)
- Recognize limits of law; Law is a blunt instrument – eg, “Doctors Tend to Ignore Living Wills”

When given hypothetical situations involving imaginary patients with living wills, nearly two-thirds of 117 doctors surveyed said they wouldn’t follow the orders. They were most likely to diverge from the documents when confronted with family members with differing views, or if there were hopeful prognoses for the patients.

yalenewhavenhealth.org/healthnews/healthday/040805HD520393.htm
• Don’t waste time fine-tuning AD legislation

• Leave the practice of medicine to doctors