

In a Case of First Impression in New Jersey, Superior Court Judge Recognizes Cause of Action for Wrongful Prolongation of Life

A Superior Court Judge in Morris County, NJ, recently ruled that a patient who was resuscitated at Morristown Medical Center against her directives can maintain a cause of action for wrongful prolongation of life.

Plaintiff Suzanna Stica had been admitted to the hospital for breathing problems. She signed "do not resuscitate" and "do not intubate" orders that were in her records. She subsequently went into cardiac arrest and was given CPR and was intubated. She lived another six months in a diminished capacity, which included unwanted pain and suffering. Her executrix, Suzanne Koerner, alleged that the defendant hospital, medical and nursing providers violated Ms. Stica's fundamental right to refuse unwanted medical treatment.

The defendants moved for Summary Judgment on the grounds that they were immunized under the New Jersey Advance Directive for Healthcare Act. In denying the motion, the Court ruled that the Act only immunizes healthcare providers from civil and criminal liability when they *honor* a DNR order. In this case, it was determined that the defendants violated the patient's rights when they resuscitated her against her clear directives.

On the heels of this decision, doctors in Miami, Florida, faced an unusual ethical dilemma when an unconscious, deteriorating patient was brought into the emergency room with the words "DO NOT RESUSCITATE" tattooed across his chest. The case was recently detailed in the *New England Journal of Medicine*, 2017, 377:2192-2193, Nov. 30, 2017. When the patient's blood pressure started to drop, the hospital physicians initially chose not to honor the tattoo, "invoking the principle of not choosing an irreversible path when faced with uncertainty." An ethics consultant was subsequently called in to discuss the legal and ethical issues, and after reviewing the case, the physicians decided to honor the patient's DNR tattoo, recognizing that it was reasonable to infer that the tattoo expressed an authentic preference. The man, who was never publicly identified, died the next morning. Social workers were later able to track down the man's proper DNR paperwork, leaving the doctors relieved.

Comment: These cases recognize the importance of preparing a clearly defined advance healthcare directive or living will to ensure that a patient's rights regarding his or her medical treatment options, including the right to refuse unwanted medical care, are carried out according to the patient's wishes.