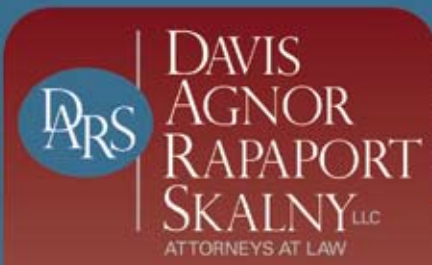


We help you find your way.



Can Schiavo happen in Maryland? It already has.

Few of us will soon forget the public debate that raged over Terry Schiavo's final weeks of life. Ms. Schiavo is the unfortunate woman who suffered a heart attack some 15 years ago, and remained in a permanent vegetative state until her feeding tube was removed.

The whole world watched as the battle played out between Terry's husband, Michael, who was trying to implement Terry's wish that she not be kept alive solely by artificial means, and her parents, along with a host of politicians and others, who tried desperately to keep her alive, against her wishes.

So, who was right? Who should have made the decision as to whether Terry's life was sustained by the use of tube feeding? The answer quite clearly is Terry.

What got lost in the rhetoric of Michael and Terry's struggle was that the courts got this one right. They repeatedly found that it was Terry's wish that she not be continued on artificial life sustaining equipment when there was no reasonable hope or expectation that she would ever enjoy any quality of life again. This was not Michael's wish, but Terry's. Michael merely implemented, and the court enforced, his wife's already established wish.

Terry's case is the latest among a long line of cases involving health care decision-making when there is a condition of a permanent vegetative state. In the 1970's, Karen Ann Quinlan's case started the debate about the use of living wills when she mixed alcohol and drugs one night in such a way that she permanently lost awareness. In a second landmark case, Nancy Cruzan was in an automobile accident in the late 1980's, the result of which is that she, too, permanently lost awareness. It was in Ms. Cruzan's case that the United States Supreme Court recognized that all citizens had the constitutional right of self-determination when it came to health-care decision-making.

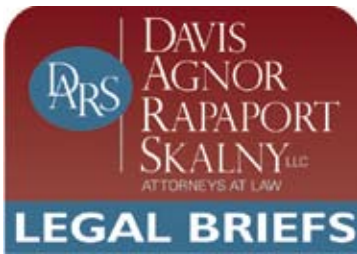
Mack v. Mack

Maryland had its own version of the Schiavo case in 1990, with circumstances eerily similar to Terry Schiavo's case. In the case of *Mack v. Mack*, the Maryland Court of Appeals considered the case of Ronald Mack, a 21 year-old husband who was involved in an automobile accident that eventually left him in a permanent vegetative state. After being in a permanent vegetative state for eight years, Ronald's wife and guardian petitioned to have his artificial life support equipment removed on the basis of two comments Ronald made to his wife when he was still competent. One comment was that "he would not want to live if he could not do for himself." Another comment was when he expressed to his wife "his gratefulness that a friend had died and did not have to suffer, when that friend was shot." The Court found these statements inadequate to determine whether Ronald would have wanted his life support removed if he were able to provide his opinion.

Lacking sufficient evidence of what Ronald would want, Ronald's wife urged the Court to adopt an objective "best interest/reasonable person" standard. In other words, the Court was asked to determine what a reasonable person in Ronald's situation would want if he was in Ronald's position. The Court refused to adopt this standard because the Court determined it would involve the need to consider the emotional and financial impact on of, Ronald's family, the burden on the limited resources of society, and Ronald's quality-of-life. Declining to adopt a standard by which others could make decisions for the Ronald, the Court ultimately refused to withdraw his life support.

Health Care Decisions Act

In reaction to the Mack decision, the General Assembly enacted, within months of that decision, the Maryland's Health Care Decision Act (HCDA). The HCDA is one of the most comprehensive health care decision laws in the nation. The Act established Maryland's "ground rules" to



ensure that when someone is unable to make health care decisions for him or herself, those decisions are made by the right people, applying the right standards.

The HCDA provides three different approaches to health care decision making, in a descending order of priority, which should be employed by an agent in making health care decisions for a patient. The first, of course, is that a health care agent must follow any express directives provided by a patient.

If the patient did not address how a particular situation should be handled, the agent should consider the wishes of the patient by considering the patient's (1) current diagnosis and prognosis with and without the treatment at issue; (2) expressed preferences regarding the provision of, or the withholding or withdrawal of, the specific treatment at issue or of similar treatments; (3) relevant religious and moral beliefs and personal values; (4) behavior, attitudes, and past conduct with respect to the treatment at issue and medical treatment generally; (5) reactions to the provision of, or the withholding or withdrawal of, a similar treatment for another individual; and, (6) expressed concerns about the effect on the family or intimate friends of the patient if a treatment were provided, withheld, or withdrawn.

Finally, if the patient's wishes cannot be ascertained, the best interest of the patient must be considered. The considerations set forth in the law balance the benefits of receiving a particular treatment with the burdens of doing so, taking into account (1) the effect of the treatment on the physical, emotional, and cognitive functions of the patient; (2) the degree of physical pain or discomfort caused to the patient by the treatment, or the withholding or withdrawal of the treatment; (3) the degree to which the patient's medical condition, the treatment, or the withholding or withdrawal of treatment result in a severe and continuing impairment of the dignity of the patient by subjecting the patient to a condition of extreme humiliation and dependency; (4) the effect of the treatment on the life expectancy of the patient; (5) the prognosis of the patient for recovery, with and without the

treatment, (6) the risks, side effects, and benefits of the treatment or the withholding or withdrawal of the treatment; and, (7) the religious beliefs and basic values of the patient receiving treatment, to the extent these may assist the decision maker in determining best interest.

Self-determination is everyone's responsibility

It has long been held in this country that no right is held more sacred, or is more carefully guarded by the law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others. Laws like the Maryland Health Care Decisions Act strive to preserve these rights. However, we all must still take personal responsibility for our own health care by communicating our wishes regarding health care and end-of-life decision-making to our entire family, no matter how young or old we are. Not only will taking this step insure that our wishes will be followed, but it will be an incredibly valuable gift to our families to remove the burden of this decision from them.