



Health**Enterprises**Network | Louisville

A Greater Louisville Inc. Affiliate

Healthcare Ethics & End of Life

Winsor Schmidt, Endowed Chair in Urban Policy,
Professor, University of Louisville School of Medicine,
Dept of Family & Geriatric Medicine

Carole Christian, Wyatt Tarrant & Combs LLP

Dr. Barry Padgett, Professor of Management and
James Medlin Chair of Business Ethics,
Belmont University

Ellen Green, Senior Director of Counseling
Services, Hosparus

Ethics and End-of-Life Care



July 21, 2010

Presented by Carole D. Christian

EVOLUTION OF KENTUCKY LAW

- Early adoption of “substituted judgment” (or perhaps “best interest” test) in 1969 Strunk v. Strunk case
- Court allowed removal of kidney from mentally retarded boy to save his brother
- Court found that survival of brother to provide companionship and care was consistent with substituted judgment rule

LANDMARK CASE: *DeGrella v. Elston* (1993)

- Young woman in PVS for nine years; issue was artificial nutrition and hydration
- Abundant evidence of expressed wishes not to be artificially sustained
- Court applied informed consent principles, found “clear and convincing evidence” sufficient to support guardian’s decision to withdraw treatment
- Liberty interest had constitutional underpinnings

KENTUCKY LIVING WILL/ADVANCE DIRECTIVES LAW

- Kentucky law provides for Living Will/Health Care Surrogate designation
- Statutory form is not very detailed
- Withdrawal of nutrition and hydration appears to be limited
- Doctrine of self-determination is broader than advance directives law

RESPONSIBLE PARTIES STATUTE, KRS 311.631

- Statute governs decision-making for incompetent adults
- In order of priority (if available, willing & competent):
 1. Court-appointed guardian
 2. Person named in durable power of attorney
 3. Spouse
 4. Adult child or children
 5. Parents
 6. Nearest living relative
- Standard: Good Faith, in accordance with advance directive, and in individual's best interest
- Authority re: nutrition/hydration limited

NEVER-COMPETENT ADULTS: *Woods v. Commonwealth* (2004)

- 71-year old man, mildly retarded, ward of state
- Permanently unconscious due to cardiac arrest
- Issue was whether court-appointed guardian could remove ventilator in absence of wishes expressed by patient
- Court found that KRS 311.631 authorized guardian to make end-of-life decisions based on best interests of ward, without going to court
- Court emphasized it is not about “quality of life” but about how patient values continued life
- Court acknowledged constitutional liberty interest, discussed factors to consider in order to prevent abuse



HOSPARUS

Because the end of life is part of living

Healthcare Ethics & End of Life July 21, 2010

Ellen Green, LCSW

Senior Director of Counseling Services

An ethical dilemma is a situation in which you must choose from various courses of action with conflicting values, rights, principles, and, not one is satisfactory.



HOSPARUS

Because the end of life is part of living



HOSPARUS

Because the end of life is part of living



Front Page News

- **Artificial Nutrition and Hydration**
- **Palliative Sedation**
- **Allegations of Euthanasia or Physician Assisted Suicide**



Enduring, though behind the scenes

- Self determination/choice vs. protection/safety
- Suicide risk
- Drug diversion
- Smoking while using oxygen
- Family conflict on end of life decisions
- Resource utilization dilemmas




Distinct, innovative Ethics Committee

- **Interdisciplinary, diverse**
- **Ad hoc and ongoing support**



Leading the Way

- Know what will be front page news
- Know what will endure behind the scenes
- Gather your resources
- Know your positions, policies, laws and regs



The great ethical danger...is not that when faced with an important decision one makes the wrong choice, but rather that one never realizes that one is facing a decision at all...

Sociologist Daniel Chambliss