



Addressing Relevant Issues Affecting Seniors and Ones who Love Them.

End-Of-Life Case Complicated By Lack of Advance Directive

Emotions can run high when family members face end-of-life decisions for a loved one. Advance directives can help; they can demonstrate the patient's wishes to both care providers and concerned family members. Often, however, with no advance directives in place emotions can make it difficult for those who love a patient to see the same answers. Sometimes they have a hard time even agreeing on the questions.

Karl Bernstein is a 79-year-old former nuclear engineer now residing in a skilled nursing facility near Thousand Oaks, California. His physicians have diagnosed him as being in the end stages of Alzheimer's-type dementia, and he is unable to communicate in any reliable or meaningful way. As became clear during a recent California court proceeding, his family members have radically different views of his condition, his needs and his likely wishes. He never signed an advance directive, so the dispute is about what he might want — with radically different views expressed by different family members.

Mr. Bernstein has a wife and three sons. His wife is the mother of two of his sons; the oldest, Scot, is the product of an earlier marriage. Scot Bernstein was appointed as his father's "conservator" (what in most states, including Arizona, would be called a "guardian of the person") in 2002. Since that time Mr. Bernstein's condition has continued

to decline, and he has had a variety of tubes inserted for feeding, hydration and breathing. He has also received injections of Botox and antibiotics, has been on dialysis, and has undergone several episodes of resuscitation.

Mr. Bernstein's wife and other two sons have consistently maintained that he is being kept in unnecessary pain, that they have been denied access to medical records and physician's recommendations, and that a "Do Not Resuscitate" (DNR) order should be entered in the medical records. Scot Bernstein has insisted that the federal Health Insurance Portability and Accountability Act (HIPAA) prohibited sharing the medical records with Mr. Bernstein's other family members. He also denies having disagreed with doctors' recommendations.

In an unpublished opinion the California Court of Appeals agreed with the trial judge and ordered that Scot Bernstein should be removed as conservator and a younger son appointed. The new conservator was given authority to remove nutrition, hydration and respiratory support without further court hearings if he determines it to be appropriate. And, said the appellate court, these kinds of disputes should usually be resolved in medical settings, not courtrooms. As the trial judge said, "this family has suffered enough."

Bernstein v. Superior Court, February 2, 2009