

denying through the doctrine of double effect a terminally ill patient's request to be given a lethal injection or to have ordinary life-sustaining measures stopped so she could die.

Cases for Evaluation

CASE 1

Faith-Healing Parents Arrested for Death of Second Child

A religious couple already on probation for choosing prayer over medicine in the death of their toddler son may be facing similar charges in the death of their newest child. "They lost their 8-month-old son, Brandon, last week after he suffered from diarrhea and breathing problems for at least a week, and stopped eating. Four years ago, another son died from bacterial pneumonia."

That boy, a two-year-old named Kent, died after the Schaibles refused to take him to the doctor when he became sick, relying instead on faith and prayer. The couple were convicted of involuntary manslaughter and sentenced to 10 years on probation.

In the latest tragedy, they told police that they prayed for God to heal Brandon instead of taking him to a doctor when he fell ill. Officials said that an autopsy will be performed on the child, and depending on those results the parents may be charged with a crime.

The couple attend, and have taught at, Philadelphia's First Century Gospel Church, which cites Biblical scripture favoring prayer and faith over modern medicine. Other religions, including Followers of Christ Church, Christian Scientists, and Scientology, have doctrines that prohibit or discourage modern medicine and therapeutic interventions.

This is not the first time that parents have gone on trial for child abuse or neglect for refusing their children medical attention. Though freedom of religion is guaranteed by the First Amendment to the U.S. Constitution, the practice of that religion does not give followers license to break the law—especially when the result is injury or death to a child.*

Do you agree with the court's sentence of ten years of probation? Should the sentence have been harsher? Why or why not? Do you think that parents should have the right to reject medical treatment for their children on the basis of religious beliefs? What moral principle would support your judgment? Should religious liberty be construed to allow parents to do anything with their children as long as the actions are based on religious considerations? If not, what sorts of actions should and should not be allowed?

*Discovery.com, 24 April 2013.

CASE 2

State Paternalism and Pregnant Women

(AP)—Public hospitals cannot test pregnant women for drugs and turn the results over to police without consent, the Supreme Court said Wednesday in a ruling that buttressed the Constitution's protection against unreasonable searches [*Ferguson v. City of Charleston*].

Some women who tested positive for drugs at a South Carolina public hospital were arrested from their beds shortly after giving birth.

The justices ruled 6-3 that such testing without patients' consent violates the Constitution even though the goal was to prevent women from harming their fetuses by using crack cocaine.

"It's a very, very important decision in protecting the right to privacy of all Americans," said Priscilla Smith, lawyer for the Center for Reproductive Law and Policy, who represented the South Carolina women. "It reaffirms that pregnant women have that same right to a confidential relationship with their doctors."

Justice John Paul Stevens wrote for the court that while the ultimate goal of the hospital's testing program may have been to get women into drug treatment, "the immediate objective of the searches was to generate evidence for law enforcement purposes in order to reach that goal."

When hospitals gather evidence "for the specific purpose of incriminating those patients, they have a special obligation to make sure that the patients are fully informed about their constitutional rights," Stevens said.

South Carolina Attorney General Charles Condon, who as a local prosecutor in Charleston began the testing program, issued a statement saying the program can continue if police get a search warrant or the patient's consent. "There is no right of a mother to jeopardize the health and safety of an unborn child through her own drug abuse," Condon wrote.

Condon developed the policy along with officials at the Medical University of South Carolina, a Charleston hospital that treats indigent patients. The women were arrested under the state's child-endangerment law, but their lawyers contended the policy was counterproductive and would deter women from seeking prenatal care. . . .

The decision reversed a federal appeals court ruling that said the South Carolina hospital's drug-testing policy was a valid effort to reduce crack cocaine use by pregnant women.

The hospital began the drug testing in 1989 during the crack cocaine epidemic. If a woman's urine test indicated cocaine use, she was arrested for distributing the drug to a minor. In 1990 the hospital gave drug-using maternity patients a choice between arrest or enrolling for drug treatment.

Ten women sued the hospital in 1993, saying the policy violated the Constitution. The hospital dropped the policy the following year, but by then police had arrested 30 women.

Do you agree with the Supreme Court's decision? Why or why not? Should the state force pregnant women to behave in certain ways while carrying a fetus? If pregnant women can be legally punished for "fetal abuse," how should it be defined? Is a pregnant woman guilty of fetal abuse if she refuses to eat properly? Drinks any amount of alcohol? Forgoes prenatal care? Whose interests should be given greater weight—the woman's or the fetus'?

*Associated Press, "Court: Consent Needed to Drug-Test Pregnant Women," CNN.com., 21 March 2001.

CASE 3

Medical Futility

(*Washington Post*)—A 17-month-old deaf, blind and terminally ill child on life support is the latest focus in an emotional fight against a Texas law that allows hospitals to withdraw care when a patient's ongoing treatment is declared "medically futile."

Since Dec. 28, baby Emilio Gonzales has spent his days in a pediatric intensive care unit, mostly asleep from the powerful drugs he is administered, and breathing with the help of a respirator. Children's Hospital here declared his case hopeless last month and gave his mother 10 days, as legally required, to find another facility to take the baby. That deadline, extended once already, was due to expire Wednesday, at which time the hospital was to shut off Emilio's respirator. Without the machine, Emilio would die within minutes or hours, hospital officials have said.

But the child's mother, Catarina Gonzales, 25, and lawyers representing a coalition of state and national disability rights advocates and groups that favor prolonging life persuaded a Travis County judge Tuesday to force the hospital to maintain Emilio's care while the search for a facility to accept him continues. The group's attempt last week to persuade a federal judge to intervene in the case failed.

County Probate Judge Guy Herman appointed a guardian ad litem, or attorney, to represent Emilio's interests and issued a temporary restraining order prohibiting Children's Hospital from removing life-sustaining care from the child. He set an April 19 hearing on the mother's and lawyers' request for a temporary injunction against the hospital.

"I believe there is a hospital that is going to accept my son," said Gonzales following the brief hearing. "I just want to spend time with my son. . . . I want to let him die naturally without someone coming up and saying we're going to cut off on a certain day."

Michael Regier, senior vice president for legal affairs of the Seton Family of Hospitals, which includes Children's Hospital, said the child's condition continues to deteriorate although he has not met the criteria to be declared brain dead. He said the

hospital has contacted 31 facilities “without any single indication of interest in taking the transfer.”

Gonzales and her lawyers are seeking a transfer for the child, diagnosed with a terminal neuro-metabolic disorder called Leigh’s disease, to a hospital that will perform a tracheotomy and insert a feeding tube so that he can live out his life in the facility or at home with his mother. But Children’s Hospital doctors have declared that continuing treatment is potentially painful and is prolonging the child’s suffering.

Emilio’s case has drawn interest and support nationwide, including from the siblings of Terri Schiavo, the Florida woman who was in a persistent vegetative state and who died in 2005 after doctors, acting on a court order, removed her life-sustaining feeding tube.

Texas’s six-year-old “futile-care” law is one of two in the country that allow a hospital’s ethics committee to declare the care of a terminally ill patient to be of no benefit and to discontinue care within a certain time frame. The patient’s family or guardian must be informed in advance of the ethics committee meeting and must be allowed to participate. The family must also be given 10 days to find a medical facility willing to accept their terminal relative. After that period, the hospital may withdraw life support. Virginia gives a family 14 days to transfer a patient once a futile-care decision is made.*

Do you agree with the hospital’s reasons for wanting to withdraw care? Do you agree with the child’s parents? Explain. Do you believe that life should be preserved at all costs (the sanctity of life view)? Why or why not? Do you believe that quality of life is more important than the preservation of life in cases like this? If so, how would you justify that view?

*Sylvia Moreno, “Case Puts Futile-Treatment Law Under a Microscope,” *Washington Post*, 11 April 2007.

FURTHER READING

Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, 5th ed. (New York: Oxford University Press, 2001), 176–94, 283–336.

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Robert M. Veatch, “The Dying Cancer Patient,” in *Case Studies in Medical Ethics* (Cambridge, MA: Harvard University Press, 1977), 141–47.

NOTES

1. This summary of positions takes its inspiration from Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, 5th ed. (New York: Oxford University Press, 2001), 182–87.
2. Linda Greenhouse, “Supreme Court Roundup: Christian Scientists Rebuffed in Ruling by Supreme Court,” *New York Times*, 23 January 1996.
3. *Prince v. Commonwealth of Massachusetts*, 321 U.S. 1958 (1944).
4. Steven H. Miles, “Informed Consent for ‘Non-Beneficial’ Medical Treatment,” *The New England Journal of Medicine* 325.7 (15 August 1991): 512–15; “Brain Damaged Woman at Center of Lawsuit over Life-Support Dies,” *New York Times* (6 July 1991), 8.
5. John Stuart Mill, *On Liberty* (1859; rpt. Gateway ed., Chicago: Henry Regnery, 1955), 17–18.
6. *Bouvia v. Superior Court*, 179 Cal. 3d 1127, 1135–43, 225 Cal. Rptr. 297 (Ct. App. 1986).
7. *Ibid.*