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Abstract

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KEYWORDS: death, dignity, terminally ill

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The advances in the field of medical science during the past several decades have been significant. The benefits society has received from those medical advances are not, however, without serious consequences.[1] Today, with the physician's vast array of weapons to combat sickness and death, terminally ill patients who no longer wish to live, but who desire a natural death with dignity, may have their lives artificially prolonged for months or even years.[2] There is growing national concern over the use of advanced medical technology to artificially prolong the lives of terminally ill patients. These concerns are echoed by the patient who expresses a desire to face death on his own terms; the health care profession who must provide medical facilities and treat the terminally ill patient; family members who are exposed to an emotional and financial strain; and the state which has an interest in the preservation of life and the protection of other aspects of our society.

Recently, the Florida judiciary was faced with balancing the interests of the state against the rights of the individual to refuse extraordinary medical treatment. Abe Perlmutter, a retired New York taxi cab driver, was diagnosed in January, 1977 as suffering from amyotrophic lateral sclerosis, a condition more commonly known as "Lou Gehrig's disease."[3] This illness is progressive with life expectancy being approximately two years from the time of diagnosis.[4] Prior to his affliction, Mr. Perlmutter was active in community affairs and enjoyed his retire-

1. Satz v. Perlmutter, 362 So.2d 160, 162 (Fla. Dist. Ct. App. 1978).

2. Friedman, *Rejection of Extraordinary Medical Care By A Terminal Patient: A Proposed Living Will Statute,* 64 IOWA L. REV. 573, 576, 577 (1979). [hereinafter cited as Friedman].

3. Miami Herald, Jan. 18, 1980, § A at 1. Amyotropic lateral sclerosis "is a disease of the nervous system in which, as a result of degeneration of nerve cells in the spine and brain, there is a progressive wasting of the muscles of the body, with spastic paralysis." BLACK'S MEDICAL DICTIONARY 37 (31st ed. 1976).

4. 362 So.2d at 161.

ment in Lauderdale Lakes, Florida.[5] In May, 1978, his condition had deteriorated to the extent that extraordinary medical treatment was required to prolong his life. Even with the mechanical respirator attached to a breathing hole in his trachea, death was expected within a short period of time.[6] In addition to the respirator, Mr. Perlmutter required a private hospital room, the continuous presence of skilled care, and constant attention from doctors and other hospital staff members.[7] On more than one occasion, Mr. Perlmutter attempted to remove the respirator. His attempts were thwarted by hospital and medical personnel who were alerted by the sounding of an alarm.[8]

Mr. Perlmutter filed a complaint in Broward County Circuit Court asking that he be given the right to determine whether to continue the extraordinary medical treatment that was artificially prolonging his life.[9] On July 11, 1978, Judge Ferris granted Mr. Perlmutter's request.[10] The decision was immediately appealed to the District Court of Appeal of Florida, Fourth District, which on September 13, 1978, affirmed the circuit court order granting Mr. Perlmutter's right to refuse life-prolonging medical treatment.[11] On October 4, 1978,[12] Mr. Perlmutter called his family to his bedside.[13] His son unplugged the

5. Mr. Perlmutter ". . . was described as a physical fitness advocate who shunned junk food and led an exercise class at his condominium." Fort Lauderdale News, Jan. 17, 1980, § A at 7.

6. Perlmutter v. Florida Medical Center, Inc., 47 Fla. Supp. 190, 191, 192 (Cir. Ct. 1978).

7. *Id.* at 192.

8. *Id.* Additionally, in his complaint, Mr. Perlmutter alleged that the hospital placed restraints upon his hands and arms to prevent his continued attempts to remove the respirator. See complaint. 47 Fla. Supp. 190.

9. Case number 78-9747, filed June 8, 1978, in the 17th Judicial Circuit, in and for Broward County, Florida.

10. 47 Fla. Supp. 190. The judge rendered his decision after conducting a bedside hearing with Mr. Perlmutter at Florida Medical Center. During this hearing, Mr. Perlmutter told Judge Ferris that he would prefer to lead a normal life, but absent this possibility, death as a result of the removal of his respirator, could not ". . . be worse than what I'm going through now." 362 So.2d at 161.

11. *Id.* at 160.

12. A petition for rehearing was denied on September 27, 1978, as well as a motion to withhold mandate and extend the stay pending Florida Supreme Court review. The Fourth District Court of Appeals issued the mandate October 3, 1978.

13. Mr. Perlmutter was a widower with adult children.

respirator and Mr. Perlmutter removed the tube from his throat.[14] Mr. Perlmutter died forty hours later.[15]

The state appealed the district court decision to the Florida Supreme Court.[16] On January 17, 1980, the Florida Supreme Court unanimously upheld the right of a competent, but terminally ill adult, who has no minor dependents and who has unanimous family approval, to refuse the artificial prolongation of his life and die with dignity.[17]

The initial suit, filed in Broward County Circuit Court by Abe Perlmutter, named a hospital, two physicians, and the State of Florida as defendants.[18] In his suit, Mr. Perlmutter asserted that he had the constitutional right to make the decision to terminate the use of life-prolonging medical treatment.[19] The defendants denied Mr. Perlmutter's asserted right to die with dignity, and the state warned of possible criminal violations of Florida law for anyone assisting in Mr. Perlmutter's effort to terminate the life-prolonging medical treatment.[20]

Judge Ferris, in granting the relief sought by Mr. Perlmutter, ruled that he could: 1) leave the hospital, or 2) remain, free of the respirator and 3) that one designated by Mr. Perlmutter to assist in the removal of the respirator would be without civil and criminal liability.[21] The circuit court relied on the landmark case, *In Re Quinlan,*[22] to hold that Mr. Perlmutter's constitutional right of privacy included the right to accept or to refuse artificial life-prolonging medical treatment.[23] The constitutional right of privacy, in cases where patients wish to decline life-prolonging medical treatment, was succinctly stated in *Quinlan:* "We think that the State's interest contra weakens and the individual's right of privacy grows as the degree of bodily invasion increases

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14. Miami Herald, Jan. 18, 1980, § A at 1.
15. *Id.*
16. This appeal was taken pursuant to FLA. CONST. art. 5, § 3(b)(3).
17. Satz v. Perlmutter, 379 So.2d 359 (Fla. 1980).
18. The suit, case number 78-9747, filed June 8, 1978, named Florida Medical Center, Inc., Nelson Liss, M.D., Marshall J. Brumer, M.D. and Michael Satz, State Attorney for Broward County as defendants.
19. 47 Fla. Supp. at 192.
20. *Id.*, FLA. STAT. § 782.08 (1979) - Assisting self-murder - "Every person deliberately assisting another in the commission of self-murder shall be guilty of manslaughter, a felony in the second degree. . ."
21. 47 Fla. Supp. at 194.
22. 70 N.J. 10, 355 A.2d 647, *cert. den.* 429 U.S. 922 (1976).
23. 47 Fla. Supp. at 193.

and the prognosis dims. Ultimately there comes a point at which the individual's rights overcome the State interest."[24]

In *In Re Quinlan,* the New Jersey Supreme Court decided that a terminally ill young woman, whose life was being artificially prolonged, could elect to discontinue the extraordinary medical treatment. The court went further and declared that because Ms. Quinlan was incompetent, a court-appointed guardian could make that decision for her.[25]

In distinguishing *Perlmutter*[26] from *Quinlan,*[27] Judge Ferris found that Mr. Perlmutter was conscious and mentally competent[28] to make a decision concerning his medical treatment.[29] The judge stated that neither the judgment of the medical profession nor that of the courts should be substituted for that of Mr. Perlmutter.[30]

The court also relied on *Superintendent of Belchertown v. Saikewicz*[31] in finding that Mr. Perlmutter's decision to refuse further life-prolonging medical treatment outweighed the state's public policy considerations.[32] In *Saikewicz,* the court was concerned with an incompetent, terminally ill patient.[33] The Massachusetts court balanced the right of the individual to refuse medical treatment against the public policy interests of the state,[34] and held that the state's interest was insufficient to overcome the individual's right to refuse life-prolonging medical treatment.[35]

Lastly, the circuit court held that anyone who might assist Mr. Perlmutter in the removal of his respirator would incur no criminal

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24. 70 N.J. 10, 355 A.2d 647, 664.

25. *Id.*

26. 47 Fla. Supp. 190.

27. 70 N.J. 10.

28. *See* note 10, *supra.* This hearing was conducted, in part, to determine Mr. Perlmutter's competency.

29. 47 Fla. Supp. at 191.

30. *Id.* at 193.

31. 370 N.E.2d 417 (Mass. 1977).

32. 47 Fla. Supp. at 193.

33. 370 N.E. 2d 417. Mr. Saikewicz was sixty-seven years old, profoundly retarded, having an I.Q. of 10 and a mental age of approximately thirty-two months. He was also suffering from an acute leukemic disorder. *Id.* at 420.

34. *Id.* at 425. The interests of the state included the preservation of life; protection of the family; maintenance of the integrity of the health care profession; and the prevention of suicide.

35. *Id.* at 435.

liability under Florida law.[36] The court reasoned that death resulting from the removal of the device would be a natural one, and therefore, an individual aiding Mr. Perlmutter would not be committing an unlawful act.[37] In addition, the court held that anyone assisting Mr. Perlmutter would incur no civil liability.[38]

The State of Florida, represented by the State Attorney for Broward County, appealed the trial court's order to the District Court of Appeal of Florida, Fourth District, emphasizing its obligation to preserve life by enforcing state statutes which prohibit both murder[39] and manslaughter.[40] The Fourth District Court of Appeal unanimously affirmed the trial court's order.[41]

In permitting Abe Perlmutter to end the painful, artificial prolongation of his life, the court relied primarily on the reasoning in *Saikewicz*[42] and the line of cases cited therein.[43] However, the court in *Perlmutter*[44] stated that the adoption of the reasoning employed in *Saikewicz*[45] was limited to the specific facts involving a legally competent, but terminally ill adult who had expressed a desire to refuse or discontinue medical treatment.[46] Judge Letts, writing for the majority, noted: "The problem is less easy of solution when the patient is incapable of understanding and we, therefore, postpone a crossing of that more complex bridge until such time as we are required to do so."[47]

It should be noted that *Saikewicz* and the cases relied upon in that decision concerned patients who were terminally ill or who had refused medical treatment because of religious considerations. Several of these patients were also legally incompetent due to profound retardation,

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36. FLA. STAT. § 782.08 (1979).
37. 47 Fla. Supp. at 194.
38. *Id.*
39. FLA. STAT. § 782.04 (1979).
40. FLA. STAT. § 782.08 (1979).
41. 362 So.2d 161, 164 (1979).
42. *Id.*, citing 370 N.E.2d 417 (Mass. 1977). *See* note 33, *supra.*
43. *Id.* A few cases cited in Saikewicz include: In Re Quinlan, 70 N.J. 10, 355 A.2d 647, cert. den. 429 U.S. 922 (1976); Erickson v. Dilgard, 44 Misc.2d 27, 252 N.Y.S.2d 705, (N.Y. Sup. Ct. 1962); In Re Estate of Brooks, 32 Ill.2d 361, 205 N.E.2d 435 (1965).
44. 362 So.2d 160.
45. 370 N.E.2d 417 (Mass. 1977).
46. 362 So.2d at 162.
47. *Id.*

age, or in an irreversible comatose condition.[48] In *Saikewicz*, the majority determined that the right of the individual to refuse life-prolonging medical treatment must be balanced against important public policy considerations.[49] The four public policy considerations include:

1) Interest in the preservation of life;
2) Need to protect innocent third parties;
3) Duty to prevent suicide;
4) Requirement that it maintain the ethical integrity of medical practice.[50]

The Fourth District Court acknowledged the state's interest in the preservation of life. However, the court found that "where the condition is terminal, the patient's situation wretched, and the continuation of life temporary and totally artificial," this consideration would be insufficient to override Abe Perlmutter's desire to die a natural death with dignity.[51]

The court also found that the state may have an interest in the protection of the family.[52] This interest is based on two considerations: 1) the state's role as *parens patriae* in guarding the best interests of the children; and 2) its desire to prevent family members from becoming wards of the state.[53] The court pointed out that Mr. Perlmutter and his family were adults, well aware of the consequences of Mr. Perlmutter's contemplated action, and that they were all in agreement with his express wish to discontinue his life-support system.[54]

Mr. Perlmutter's refusal to continue life-prolonging medical treatment would not, according to the court, constitute suicide.[55] In reaching this decision, the court considered Mr. Perlmutter's basic desire to live without total dependence on artificial life-support, and the fact that his illness was not self-induced.[56] In refusing to classify Mr. Perlmut-

48. 370 N.E.2d at 424, 425.
49. *Id.* at 425, 435.
50. *Id.* at 425.
51. 362 So.2d at 162.
52. *Id.*
53. Friedman at 607.
54. 362 So.2d at 162.
55. *Id.* at 163.
56. *Id.* at 162, 163.

ter's contemplated action as suicide, the court distinguished between a patient choosing to forego medical treatment such as surgery or chemotherapy, and an affirmative act such as disconnecting a life-support system.[57] It stated: "[n]otwithstanding, the principle is the same, for in both instances the hapless but mentally competent victim is choosing not to avail himself of one of the expensive marvels of medical science."[58]

The court also distinguished between cases which involved court ordered medical treatment for incompetent patients or minor children,[59] and those cases which have upheld the right of competent adults to refuse medical treatment.[60] The majority agreed that competent adults had the right to refuse medical treatment, and concluded by noting that ". . . because Abe Perlmutter has a right to refuse treatment in the first instance, he has a cocomitant right to discontinue it."[61]

In considering the threat that the right to refuse medical treatment may pose to the ethical integrity of the medical profession, the majority in specifically adopting the language of *Saikewicz,* agreed that the maintenance of the ethical integrity of the health care profession does not "... demand that all efforts toward life prolongation be made in all circumstances."[62] The court also recognized that the dying patient is often in need of comfort rather than treatment, and that the patient's right to self-determination must co-exist with the interests of the health care profession.[63] Again, adopting the language of *Saikewicz,* the court recognized that the right to bodily integrity, inherent in the doctrines of informed consent and the right of privacy, is superior to the interests of the health care profession.[64]

After weighing the individual's right to refuse medical treatment and die a natural death with dignity against the state's public policy considerations, the Fourth District Court of Appeal concluded:

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57. *Id.* at 163.

58. *Id.*

59. 362 So.2d at 163, n. 1.

60. *Id.* at 163, n. 3. It should be noted that of the eight cases listed, three—Saikewicz, Schiller, and Quinlan—concerned incompetent parties.

61. *Id.* at 163.

62. *Id.,* citing 370 N.E.2d at 426.

63. 362 So.2d at 162, 370 N.E.2d at 427.

64. *Id.*

> It is our conclusion, therefore, under the facts before us, that when these several public policy interests are weighed against the rights of Mr. Perlmutter, the latter must and should prevail. Abe Perlmutter should be allowed to make his choice to die with dignity, notwithstanding over a dozen legislative failures in this state to adopt suitable legislation in this field. It is all very convenient to insist on continuing Mr. Perlmutter's life so that there can be no question of foul play, no resulting civil liability and no possible trespass on medical ethics. However, it is quite another matter to do so at the patient's sole expense and against his competent will, thus inflicting never ending physical torture on his body until the inevitable, but artificially suspended, moment of death. Such a course of conduct invades the patient's constitutional right of privacy, removes his freedom of choice and invades his right to self-determine.[65]

Although the court determined this issue to be of great public interest, the majority affirmed the trial court's judgment without certifying the question to the Florida Supreme Court for review.[66] Judge Anstead, specially concurring, agreed with the majority opinion, but stated that this issue was of such significant importance as to warrant certification to the supreme court for a thorough review.[67]

The Florida Supreme Court unanimously affirmed the decision of the Fourth District Court of Appeal.[68] The supreme court adopted the district court's opinion as its own ". . . because of the clarity of the reasoning and articulation of the applicable principles of law contained in the District Court's opinion."[69] The court did, however, limit its affirmation of the lower court's decision to include only competent, but terminally ill adults with no minor dependents, who have the unanimous approval of all affected family members.[70]

In order to clarify certain policy positions contained in the appeal, the court addressed the question of which governmental branch, the legislature or the judiciary, should respond to the issue of death with dignity for terminally ill patients.[71] Due to the complex nature of the issue, the various interests involved and the need to provide a forum for

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65. 362 So.2d at 164.
66. *Id.*
67. *Id.*
68. 379 So.2d 359 (Fla. 1980).
69. *Id.* at 360.
70. *Id.*
71. *Id.*

the airing of public opinion, the court expressed a preference for legislative action in this area.[72] The preference for a legislative resolution of this controversial issue does not, however, preclude the courts from responding when ". . . legally protected interests are at stake."[73] Justice Sundberg summarized the court's position by stating: "[L]egislative inaction cannot serve to close the doors of the courtrooms of this state to its citizens who assert cognizable constitutional rights."[74]

The court conceded that there were certain limitations in the judicial resolution[75] of this complex issue, and until the legislature responds, the courts will continue to balance the public policy considerations against the rights of the terminally ill patient to refuse medical treatment on a case by case basis.[76]

In the *Perlmutter*[77] decision, the Florida Supreme Court recognized the constitutional right, with specific limitations, of an individual to refuse or discontinue extraordinary medical treatment. The decision was narrowly limited to include only those adults who are competent, terminally ill, without minor children, and whose family members unanimously consent to the patient's decision.[78]

The strict limitations imposed by the court may seriously hinder many, if not most, terminally ill patients from exercising their rights to refuse medical treatment. This constitutional right may be restricted because many terminally ill patients will fail to meet what may be termed the stringent Five-Prong Perlmutter test.[79] Other courts that have grappled with this difficult and controversial issue have expanded this constitutional right to allow all terminally ill patients, regardless of

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72. *Id.*
73. *Id.*
74. *Id.*
75. The courts generally require a great deal of time to resolve an issue and occasionally fail to resolve some issues. There is also an increased strain on the emotional and financial resources of the family.
76. 379 So.2d 359, 361 (Fla. 1980).
77. 379 So.2d 359 (Fla. 1980).
78. *Id.* at 360.
79. *Id.* In order to meet the Five-Prong test, the patient must be:
1) an adult
2) legally competent
3) terminally ill
4) without minor dependents
5) able to obtain the unanimous consent of affected family members.

competency, to die with dignity.[80] This expanded right may be subject, however, to the general public policy considerations in *Saikewicz*.[81]

The *Perlmutter*[82] decision poses an ominous threat to those opposed to death with dignity. Some opponents claim that this and other similar decisions constitute an "opening wedge"[83] that will imperil the sanctity and preservation of life. This theory rests on the proposition that certain factions within society would begin with the elimination of terminally ill patients and eventually include elderly citizens and severely deformed children.[84]

As the court pointed out, there are distinct limitations on the ability of the judicial system to adequately resolve problems in the area of death with dignity.[85] Resolving the problems of the terminally ill who wish to refuse medical treatment on a case by case basis may result in an additional burden on an already overburdened court system. This additional litigation could involve enormous amounts of time and ex-

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80. The following cases illustrate the expansion of the right to die with dignity by allowing third parties to order the termination of medical treatment for incompetent, terminally ill patients: In Re Quinlan, 70 N.J. 10, 355 A. 2d 647, *cert. den.* 429 U.S. 922 (1976). *See* text accompanying notes 24, 25 *supra.* Superintendent of Belchertown v. Saikewicz, 370 N.E. 2d 417 (Mass. 1977). *See* note 33 *supra.* In Dockery v. Dockery, No. 51439 (Chattanooga, Tenn. Chancery Ct., Part 2, filed Jan. 5, 1977), the court allowed the husband of a comatose (incompetent) patient to order the removal of her respirator, despite the fact that the patient had consented to the use of the respirator before becoming incompetent. In In Re Eichner, No. 21242-I-79 (N.Y. Sup. Ct. Dec. 12, 1979), *aff'd* __ N.Y.S. __ (App. Div. March 27, 1980). The court ruled, in New York's first right to die case, that a respirator could be removed from an imcompetent, eighty-three year old Roman Catholic priest. The decision was based not on the express approval of the patient, but partially upon statements he had made in the past concerning the Quinlan decision. In Oharek v. Orlando Regional Medical Center, 79-1653 (Fla. Cir. Ct. Oct. 9, 1979), a circuit judge in Orlando ruled that the son of an incompetent, seventy-one year old man suffering from severe, irreversible brain damage could, as guardian for his father, order the cessation of "heroic" medical procedures. According to the judge's order, extraordinary measures of life support included respirators, antibiotics, or other drugs.

81. 370 N.E. 2d 417. *See* note 34, *supra.*

82. 379 So.2d 359 (Fla. 1980).

83. Kamisar, *Euthanasia Legislation: Some Non-Religious Views Against Proposed Mercy-Killing Legislation*, 42 MINN. L. REV. 969, 1030 (1958).

84. Friedman at 604-606.

85. 379 So.2d 359, 360 (Fla. 1980).

pense for all concerned parties. Also, the imprecise language used in the decision may produce uncertainty and lead to future litigation.[86]

Finally, the problems created by requests for death with dignity are broad questions of public policy which should and must be resolved by the legislature: "While it is true that legislative inaction has created a vacuum in this difficult area of the law, the ability of the judiciary to fill the void should be seriously questioned."[87] This decision places the responsibility for resolving the problems associated with death with dignity back to the legislature, where it belongs.

Ten states have enacted death with dignity legislation. This legislation establishes guidelines for the patient, family, and medical profession to follow when a terminally ill patient elects to discontinue medical treatment.[88] Existing death with dignity legislation is not a panacea

86. *E.g.*, the court never defined such basic terms as "terminally ill," "extraordinary medical treatment," "competent," and "family members".

87. W. Hyland, *In Re Quinlan: A Synopsis of Law and Medical Technology,* 8 RUTGERS L. J. 37, 58 (1976).

88. The state statutes generally provide guidelines whereby an individual may elect to refuse extraordinary medical treatment. Included in the guidelines are forms to be followed by qualified individuals (qualifications are specified in each statute). The form an individual uses to make his wishes known and legally recognized is called a directive or living will. Also included in the statutes are provisions for the protection of the health care profession from civil and criminal liability; procedures for the execution and revocation of the directive; penalties for the concealment, falsification, or destruction of the document; and definitions of statutory terms.

The following state statutes, together with selected requirements of each law, are listed in the chronological order of their enactment:

CAL. HEALTH & SAFETY CODE § 7185-7195 (Deering Supp. 1979) - California's Natural Death Act, enacted in 1976, was the first statute to recognize an individual's right to die with dignity. The statute, while acknowledging this right, provides more stringent procedural safeguards than most other death with dignity statutes. These include the requirements that: 1) a directive be executed at least fourteen days after an individual has been diagnosed as terminally ill; 2) two physicians must certify that the patient is terminally ill; 3) a physician must determine the validity of the directive; and 4) a "patient advocate" designated by the state must witness a directive executed by an individual in a nursing home. Other statutory safeguards include: 1) the invalidity of the directive during a patient's pregnancy; 2) penalties for physicians who do not comply with the statute; and 3) the requirement that a directive be re-executed every five years.

IDAHO CODE § 39-4501 to 4508 (Supp. 1979)—This 1977 statute is similar to California's statute. The individual must be terminally ill, but the diagnosis may be made by only one physician. The terminally ill patient must be able to communicate with the

for problems associated with death with dignity, but it does offer a

doctor, and there is no requirement that a patient execute the directive fourteen days after being diagnosed as terminally ill. Also, the directive is invalid during a patient's pregnancy.

ARK. STAT. ANN. § 82-3801 to 3804 (Supp. 1979)—Arkansas' statute, enacted in 1977, is the briefest, but most comprehensive statute enacted to date. This statute does not provide a specific form to follow when preparing a directive, procedures for revoking a directive, or penalties for tampering with a document. It does contain a provision which allows a directive to be executed on behalf of an individual who is physically or mentally incompetent. This statute is unique because it includes a provision which allows an individual to request that extraordinary life-prolonging procedures *be* employed.

N.M. STAT. ANN. § 12-35-1 to 35-11 (1977)—This 1977 statute allows a directive to be executed on behalf of a terminally ill minor by family members or guardian. An individual may execute the document prior to the diagnosis of terminal illness; however, a specific form is not included in the statute. The immunity from civil and criminal liability for health care personnel is not as extensive as in other statutes.

NEV. REV. STAT. § 449.540-690 (1977)—In order to execute a directive, an individual's terminal illness is not required. A physician is not bound by a directive if the patient is unable to communicate with the attending physician. However, the physician shall consider the directive along with other factors in reaching his decision.

ORE. REV. STAT. Ch. 211 (1979)—Oregon's 1977 statute requires the directive to be re-executed every five years. It is invalid unless executed at least fourteen days after a patient has been diagnosed as having a terminal illness. This statute provides for a "patient advocate" for nursing home patients, but does not provide for pregnant patients.

TEX. REV. CIV. CODE ANN. § 4590h (Vernon Supp. 1980)—A directive, executed in Texas under the 1977 statute, is effective until revoked. An individual must be diagnosed as having a terminal illness prior to executing a document. The physician has the responsibility for determining the validity of the directive and the patient's mental competency.

N.C. GEN. STAT. § 90-320-323 (Supp. 1979)—This 1977 statute combines the usual right to die provisions with those setting forth the definition of brain death. The statute provides, subject to specific conditions, procedures for the termination of extraordinary medical treatment in the absence of a declaration. The declaration must be proved by a clerk of the court or notary public.

WASH. REV. CODE ANN. Ch. 112 (Supp. 1979)—This statute requires the physician to determine the validity of the directive. The directive is required to be placed in the patient's medical file. The document is void during a patient's pregnancy.

KAN. STAT. ANN. § 65-28, 101 to 28,109 (Supp. 1979)—This is the most recent right to die statute to be enacted. Under the statute, physicians are liable for charges of unprofessional conduct for failing to abide by the statute. The declarant has the responsibility of notifying the physician of the existence of the document.

The relative success of the existing death with dignity legislation (a total absence

reasonable and practical solution to a complex problem.

It is the responsibility of the legislature to respond to this complex social issue in a manner that will meet the needs of all of the citizens.[89] Death with dignity legislation has been proposed in the Florida Legislature every year since 1968.[90] It is time, especially in light of the *Perlmutter* decision, for Florida legislators to shoulder their responsibility.

Michael T. Hand
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of litigation and no reported abuse) has had a significant impact on legislators in other states. In 1979, bills were introduced in eighteen additional state legislatures. It would appear that the chances, in the 1980's, are excellent for the enactment of additional death with dignity legislation. "News from Society for the Right to Die", *New Right-To-Die Laws Influence Medical Treatment of Dying Patients,* at 1, 2 (April, 1979) (Press Release).

89. Fort Lauderdale News and Sun-Sentinel, Jan. 20, 1980.

90. Sun-Sentinel (Fort Lauderdale, Fla.), Jan. 18, 1980, § A at 14. It is of interest to note that the first bill was proposed by Walter Sackett, a Miami doctor and former state legislator.