

IN THE CIRCUIT COURT OF THE
SIXTH JUDICIAL CIRCUIT IN AND
FOR PINELLAS COUNTY, FLORIDA

IN RE: Guardianship of
THERESA MARIE SCHIAVO,
Incapacitated.

Michael Schiavo, as Guardian of
the person of Theresa Marie Schiavo,
Petitioner,

vs.

Probate Division
File N. 90-2908GD-003

Robert Schindler and Mary Schindler,
Respondents.

**NOTICE TO COURT PURSUANT TO SECTION 415.1055(9), F.S.
AND PETITION/MOTION FOR INTERVENTION**

COMES NOW, Susan McPhee, Petitioner, a representative of the
Department of Children and Families of the State of Florida (hereinafter referred to
as DCF), by and through its undersigned counsel, and files this notice and makes
application for the following forms of relief:

NOTICE PURSUANT TO SECTION 415.1055, F.S.

1. Please take notice that on or about March 21, 2005, DCF received reports
of abuse, neglect or exploitation involving allegations related to Theresa
Marie Schiavo regarding the administration of pain medication i.e. morphine
when said person is in a persistent vegetative state.

2. Additional reports still under investigation that the Department has duly advised this court of raise approximately 30 detailed allegations of abuse, neglect or exploitation in a 34 page document received by the DCF hotline on February 18, 2005 and February 21, 2005 and forwarded to DCF's Suncoast Region Office, whereupon an investigation has been commenced.

NEW PETITION FOR INTERVENTION

3. Again, DCF, by and through its counsel petitions for leave to intervene, and in support of this intervention states as follows: DCF and criminal investigative agencies are required by the legislature to provide for the detection and correction of abuse, neglect, and exploitation and to establish a program of protective services for all disabled adults or elderly persons in need of them. Section 415.101(2), F.S.
4. In addition to the hotline noticed above, on or about 2/18/05, DCF received Hotline calls alleging abuse neglect and exploitation of Ms. Schiavo by her Husband and Guardian, Michael Schiavo. Many of the approximately 30 allegations were allegations that had been previously reported but there was an indication that the conduct alleged was an ongoing activity requiring investigation into the pattern e.g. keeping the ward in her room as an act of isolation etc.

5. As part of our investigation, the DCF sought the assistance of additional professionals from the Adult Protection Team, which is a multidisciplinary group of professionals familiar with adult protection issues as set forth in 415.1102 F.S. This team has met as a group on two occasions and has conducted portions of the investigation outside of such meetings.

6. The allegations were divided into medical neglect, isolation and exploitation, and while the investigation is still underway some distinct signs of neglect in these areas have arisen to the point where it is truly believed that DCF must renew its request for the relief previously sought as outlined herein.

7. In our investigation into the ongoing allegation of denial of therapy and rehabilitation (and other rights of the ward), the issue of the diagnosis of Persistent Vegetative State (hereinafter referred to as PVS) had been asserted by the guardian as dispositive of the allegations. That is, if Ms. Schiavo was PVS, she would not need detailed medical reports every year as part of Michael's Guardianship plan; and not need therapy etc. Our investigation into this defense revealed:
 - a. Credible evidence through the analysis of our Board Certified Neurologist on our APT that seriously challenges the diagnosis that Ms. Schiavo is in a PVS. These findings are detailed in the doctor's affidavit attached hereto and made a part hereof as Exhibit A (filed under separate cover). Dr

Cheshire's' resume is attached as Exhibit B. The essence of the preliminary conclusions are that because Ms. Schiavo has been administered pain medication on a consistent basis for well defined periods of visible need (e.g. menstrual periods and tooth aches) that such needs are not consistent with PVS. The significance of not being PVS would shatter the legal basis for the removal of life support. Additionally, Ms. Schiavo's contextual response to her immediate circumstances has been cited by the neurologist as further indicators of not being in PVS. One such example has been gained from review of the Probate record containing the neurological exam of Ms. Schiavo See Exhibit C; a compressed video of said contextual response. The videotapes provided by the court were incomplete and the DCF renews its request for the full records to complete its investigation.

- b. The diagnosis of PVS did not suspend the Guardians legal duty to pursue rehabilitation and redetermine capacity at least 90 days before each filing of the guardianship plan 744.3675(b)2 and 3 F.S. In fact, the annual medical appraisals required by Michael as guardian were either not done at all or done in such a poor manner as to contribute to a perception of PVS. The medical records cite to pain on several occasions examples are attached to the neurologist's affidavit.

8. Intervention is a right of anyone claiming an interest in pending litigation that may be asserted at any time; intervention should be granted to anyone claiming an interest in pending litigation. Rule 1.230, *Florida Rules of Civil Procedure*.
9. DCF, by virtue of its aforementioned statutory mandate, asserts a right of intervention in the pending guardianship proceeding of Theresa Marie Schiavo to protect the following interests:
 - a. DCF, in its unique and legislative role as a detector of abuse, neglect and/or exploitation (Section 415.101(2), F.S.), has a heretofore unrepresented interest in whether Theresa Marie Schiavo, the subject of a substantial number of allegations of abuse, neglect, and exploitation, remains a viable living adult during the pendency of DCF's investigation. Plainly stated, due to the investigation and the potential need for examination of the alleged victim, surroundings and circumstances as required by law, DCF is interested, directly and immediately, in that part of the guardianship proceeding which calls for the removal of life support, because such action would deny DCF's ability to meet its statutory duty. See *Morgareidge v. Howey*,

78 So. 14; 75 Fla 234 (1918) and Schindler v. Schiavo, 866 So.2d 140 (2nd DCA 2004).

- b. Further, DCF is interested in the guardianship proceeding as, by all accounts, Theresa Marie Schiavo, vulnerable adult who, as defined by law, may, by virtue of the allegations, be entitled to statutory services. See Sections 425.102(26) and 415.1051, F.S. The Court's final determination in the guardianship proceeding regarding the removal of the feeding tube and hydration will have a direct and immediate impact upon DCF's legislative mandated functions of not only investigation but also, the provision of services. See In re West Water Management District, 269 So.2d 405 at 407 (2d DCA 1972) where Judge Liles for the Second District Court of Appeal opined "the trial judge was in error in his failure to allow the county to participate in what has been designated to be their mandatory function."

10. DCF's ability to perform its governmental mandated function will be gained or lost by the direct legal operation and effect of the court's final order in the guardianship proceeding.

11. DCF's petition to intervene is timely. Allegations raised in the report of abuse, neglect and/or exploitation raise factual issues heretofore not seen by DCF nor noticed to the Probate Court pursuant to Section 415.1055 (9), F.S. Allegations which predate the order of removal of nutrition and hydration of September 17, 2003 (hereinafter referred to as the referral

order) are particularly supportive of a grant for intervention. Smith v. Elliott, 56 Fla. 849, 47 So. 387 (Fla. 1908). Intervention is allowed even after final judgment where “the interests of justice so require and intervener stands to lose or gain valuable rights dependant upon the outcome of the case.” Schiller v. Schiller, 625 So.2d 856 at 860. It is respectfully submitted that where the issue of one’s life is the very subject of the proceeding, the interest of justice is, no doubt, very heightened.

12. DCF seeks at this time intervention for the limited purpose of standing to object to the entry of a final order allowing termination of life support during the pendency of DCF’s investigation which has a statutory 60 day deadline (Section 415.104(4)).

Wherefore, DCF Request a grant of intervention and for access to court records as previously requested.



Susan McPhee
Program Administrator
Department of Children and Families



Keith J. Ganobsik, Esquire
Assistant Regional Legal Counsel
Department of Children
Family Services
11351 Ulmerton Road
Largo, Florida 33778
Florida Bar No. 0143420

STATE OF FLORIDA

COUNTY OF PINELLAS

The foregoing instrument was sworn to before me this 23rd day of ~~February~~ ^{March}, 2005 by Mike Will who is ~~personally known~~ to me or who has produced _____ as identification and who did take an oath.

NOTARY PUBLIC

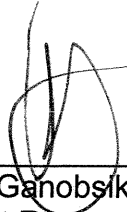


Jennifer Andreassen
Commission # DD347037
Expires: AUG. 16, 2008
Bonded Thru
Atlantic Bonding Co., Inc.

Sign: Jennifer Andreassen
Print: Jennifer Andreassen
State of Florida at Large (Seal)
My Commission Expires

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by hand delivery, facsimile or United States mail this ^{23rd} day of February 2005, to the following: David Gibbs, George Felos.



Keith J. Ganobsik, Esquire
Assistant Regional Legal Counsel
Department of Children
Family Services
11351 Ulmerton Road
Largo, Florida 33778
Florida Bar No. 0143420

William Polk Cheshire, Jr.

Curriculum Vitae

last updated January 2005



CONTACT INFORMATION

Department of Neurology
 Mayo Clinic
 4500 San Pablo Road
 Jacksonville, Florida 32224
 Telephone (904) 953-2000
 Facsimile (904) 953-0757
 E-mail cheshire@mayo.edu

1. BIOGRAPHICAL

Citizen of U.S.A.; born in Richmond, Virginia, 2 May 1960
 Home address: Ponte Vedra Beach, Florida
 Married 22 years; father of four children
 Religious affiliation: Anglican

2. PRESENT ACADEMIC RANK and POSITIONS

Associate Professor of Neurology, Mayo Clinic College of Medicine
 Consultant, Department of Neurology, Mayo Clinic, Jacksonville, Florida
 Director, Autonomic Reflex Laboratory, Mayo Clinic, Jacksonville, Florida
 Director, Ethics Education, Department of Neurology, Mayo Clinic, Jacksonville, Florida
 Director of Biotechnology Ethics, The Center for Bioethics and Human Dignity
 Member, Board of Directors, The Center for Bioethics and Culture
 Adjunct Professor of Bioethics, Trinity Graduate School, Deerfield, Illinois

3. EDUCATION and TRAINING

A.B. in Biochemical Sciences, Princeton University, Princeton, New Jersey	1978-1982
M.D., West Virginia University, Morgantown, West Virginia	1983-1987
Intern in Medicine, West Virginia University, Morgantown, West Virginia	1987-1988
Resident in Neurology, University of North Carolina, Chapel Hill, North Carolina	1988-1991
Fellow in Pain Management, University of North Carolina, Chapel Hill, North Carolina	1991-1992
M.A. in Bioethics, Trinity International University, Deerfield, Illinois	1999-2001

4. BOARD CERTIFICATION

Diplomate in Neurology, American Board of Psychiatry and Neurology	1994
Diplomate of the National Board of Medical Examiners	1988

ATTACHMENT "B"

5. MEDICAL LICENSURE

Florida	1992 – present
Minnesota	1992 – present
North Carolina	1991 – present

6. HONORS and AWARDS

Graduated <i>cum laude</i> , Princeton University, A.B. Biochemical Sciences	1982
Named as member, Society of the Cincinnati	1983
Graduated <i>summa cum laude</i> , Trinity International University, M.A. Bioethics	2001
Outstanding Faculty Member, Mayo School of Continuing Medical Education	2001
Named as Fellow, the Center for Bioethics and Human Dignity	2002
Named as Fellow, the American Academy of Neurology	2004
Teacher Recognition Award, the American Academy of Neurology	2004
Clinician Educator Award, Mayo Foundation	2004

7. HOSPITAL PRIVILEGES

St. Luke's Hospital, Jacksonville, Florida	1992 – present
University of North Carolina Hospitals, Chapel Hill, North Carolina	1991 – 1992

8. PREVIOUS APPOINTMENTS

Laboratory Assistant, Department of Molecular Biology, Princeton University, Princeton, New Jersey	1982 – 1983
Clinical Instructor of Neurology, Department of Neurology, University of North Carolina, Chapel Hill, North Carolina	1991 – 1992
Instructor of Neurology, Mayo Medical School	1992 – 1995
Senior Associate Consultant, Department of Neurology, Mayo Clinic	1992 – 1995
Assistant Professor of Neurology, Mayo Medical School	1995 – 2004

9. PROFESSIONAL MEMBERSHIPS and OFFICES*A. Medical and scientific:*

American Academy of Neurology Autonomic Nervous System Section Chair	1989 – present
Vice-Chair	2002 – 2004
Secretary	2000 – 2002
Executive Committee	1996 – 2000
Nominating Workgroup, Chair	1994 – 2006
Education Committee, Chair	2004 – 2007
	1994 – 1996

Committee on Sections	2002 – 2004
Residency Education Subcommittee, resident member	1989 – 1991
American Autonomic Society	1992 – present
International Society for Autonomic Neuroscience	1999 – present
American Scientific Affiliates	2004 – present
Bioethics Commission	2004 – present
Christian Medical Association	1997 – present
Ethics Commission	2002 – 2005
 <i>B. Ethical:</i>	
The Center for Bioethics and Human Dignity	1999 – present
Director of Biotechnology Ethics	2004 – present
Advisory Council	2004 – present
The Center for Bioethics and Culture	2002 – present
Associate Director	2003 – 2004
Member, Board of Directors	2004 – present
American Society for Bioethics and Humanities	2001 – present
Task Force on Graduate Medical Education in Ethics and Humanities, Subsection addressing ACGME professionalism core competency	2003 – 2004
Hastings Center, Associate Member	2001 – present
Northeast Florida Bioethics Forum	2004 – present
UNF Bioethics Curriculum Committee	2004 – present

10. EDUCATIONAL ACTIVITIES

A. Course and Curriculum Development

1. Course Director, Clinical Autonomic Quantitation Workshop, Mayo School of Continuing Medical Education, Jacksonville, Florida, November 2-3, 2001.
2. Developed the integrated core curriculum in Bioethics for the Department of Neurology, Mayo School of Graduate Medical Education, Jacksonville, Florida. The curriculum consists of 12 lectures divided over a three-year cycle. Four lectures are given annually since 2002.

Bioethics Year 1

Professionalism I: Medical professionalism and the Mayo ethos
 Approaches to bedside ethical dilemmas
 Caring for the dying patient
 Determination of brain death

Bioethics Year 2

Professionalism II: Principles of ethical caregiving
 Ethical communication
 Substitute decision-making
 The ethical uses of technology

Bioethics Year 3

Professionalism III: Bridging human diversity
 Truth-telling, risk disclosure, and medical error
 Genetic ethics
 Ethics of clinical research

3. Supplemental lectures for the Bioethics core curriculum

Bioethics at the bedside: the patient with advanced dementia	December 3, 2002
When patients make unreasonable requests	December 17, 2002
Medical futility	December 17, 2002
Hot science, cold hands, and warm professionalism	June 16, 2004
A short history of neuroethics	June 18, 2004

4. Coordinated and Moderated the Bundy Lecture series on medical professionalism, Mayo School of Continuing Medical Education, Ponte Vedra Beach, Florida, February 28, 2002.

Pellegrino ED. Ethics in the clinical setting: the ethics work-up	February 27, 2002
An evening with Professor Pellegrino, program for residents	February 27, 2002
Pellegrino ED. Is medicine a profession? Why?	February 28, 2002

5. Consultant at bioethics curriculum development workshop, Bioethical Questions for the Future: Training Leaders, Graylyn International Conference Center, Wake Forest University, Winston-Salem, North Carolina, January 22-23, 2004.

6. Member, Ethics Curriculum Development Subcommittee, University of North Florida, Jacksonville, Florida, November 2004 to present.

7. Invited Course Director, Autonomic Disorders half-day course, annual meeting of the American Academy of Neurology, to be held in Miami Beach, Florida, April 2005

B. Teaching Activities – Mayo Continuing Medical Education Courses

1. Syncope

Clinical Neurology for the Non-Neurologist. Mayo School of Continuing Medical Education
 Ponte Vedra Beach, Florida, May 15, 1993

2. Dystonia

Clinical Neurology for the Non-Neurologist. Mayo School of Continuing Medical Education
 Ponte Vedra Beach, Florida, May 15, 1993

3. Neurological aspects of neck and back pain

Clinical Neurology for the Non-Neurologist. Mayo School of Continuing Medical Education
 Ponte Vedra Beach, Florida, March 18, 1995

4. Management of trigeminal neuralgia

Clinical Reviews and Primary Care Update. Mayo School of Continuing Medical Education
 Amelia Island, Florida, June 8, 1998

5. Orthostatic intolerance and postural tachycardia syndrome

Clinical Autonomic Quantitation Workshop. Mayo School of Continuing Medical Education
 Rochester, Minnesota, September 19, 1998

6. Laboratory workshops

Clinical Autonomic Quantitation Workshop. Mayo School of Continuing Medical Education
Rochester, Minnesota, September 20, 1998

7. Acute and postherpetic neuralgia

Clinical Neurology for the Non-Neurologist. Mayo School of Continuing Medical Education
Amelia Island, Florida, March 12, 1999

8. Pain potpourri

Clinical Neurology for the Non-Neurologist. Mayo School of Continuing Medical Education
Amelia Island, Florida, March 12, 1999

9. Headache—when to worry

Practical Clinical Neurology for the Primary Care Physician. Mayo School of Continuing Medical
Education
Orlando, Florida, April 27, 2001

10. The triptan revolution

Practical Clinical Neurology for the Primary Care Physician. Mayo School of Continuing Medical
Education
Orlando, Florida, April 28, 2001

11. Headache in the elderly

Practical Clinical Neurology for the Primary Care Physician. Mayo School of Continuing Medical
Education
Orlando, Florida, April 28, 2001

12. Evaluation of adrenergic function

Clinical Autonomic Quantitation Workshop, Mayo School of Continuing Medical Education
Jacksonville, Florida, November 2, 2001

13. Thermoregulatory sweating test

Clinical Autonomic Quantitation Workshop, Mayo School of Continuing Medical Education
Jacksonville, Florida, November 2, 2001

14. Laboratory workshops

Clinical Autonomic Quantitation Workshop, Mayo School of Continuing Medical Education
Jacksonville, Florida, November 3, 2001

15. Evaluation of cardiovagal function

Clinical Autonomic Quantitation Workshop, Mayo School of Continuing Medical Education
Rochester, Minnesota, March 15, 2003

16. Syncope

Clinical Autonomic Quantitation Workshop, Mayo School of Continuing Medical Education
Rochester, Minnesota, March 15, 2003

17. Laboratory workshops

Clinical Autonomic Quantitation Workshop, Mayo School of Continuing Medical Education
Rochester, Minnesota, March 16, 2003

C. Neurology Resident Lecture Series, Mayo School of Graduate Medical Education

1. Regional pain syndromes
August 29, 2002; August 25, 2003; August 31, 2004
2. Syncope
August 26, 2002; August 28, 2003; July 28, 2004
3. Neurologic evaluation of neck and upper extremity pain
August 22, 2002; August 21, 2003
4. Principles of neuropathic pain management
April 15, 2003
5. Disorders of the autonomic nervous system
August 6, 2003; April 1, 2004
6. Clinical Neurophysiology Course. August 6, 2003; August 4, 2004
Evaluation of sudomotor dysfunction
Evaluation of adrenergic dysfunction
Evaluation of cardiovagal dysfunction
Evaluation of syncope
Evaluation of orthostatic intolerance
Autonomic testing demonstrations
7. Trigeminal neuralgia
February 26, 2004
8. Central pain disorders
April 22, 2004

D. Grand Rounds and Teaching Conferences

1. Neurocysticercosis
Neurology Grand Rounds, University of North Carolina
Chapel Hill, North Carolina, November 28, 1988
2. Autonomic nervous system dysfunction in Guillain Barré syndrome
Neuropathology Conference, University of North Carolina
Chapel Hill, North Carolina, February 22, 1989
3. Wolfram syndrome
Neurology Grand Rounds, University of North Carolina
Chapel Hill, North Carolina, March 6, 1989
4. Spinal cord stroke
Neurology Grand Rounds, University of North Carolina
Chapel Hill, North Carolina, August 21, 1989
5. Neurodegenerative disorders
Lecture to University of North Carolina Physical Therapy Students
Chapel Hill, North Carolina, November 27, 1989
6. Electrical Injury to the Nervous System
Burn Unit Conference, University of North Carolina

Chapel Hill, North Carolina, December 4, 1989

7. Interictal behavioral phenomena

Neurology Grand Rounds, University of North Carolina

Chapel Hill, North Carolina, March 12, 1990

8. Spinal cord injury

Lecture to University of North Carolina Occupational Therapy Students

Chapel Hill, North Carolina, December 6, 1990

9. Micromercurialism and the dental amalgam controversy

Neurology Grand Rounds, University of North Carolina

Chapel Hill, North Carolina, March 25, 1991

10. Pain

Lecture to University of North Carolina Neurology Nurses

Chapel Hill, North Carolina, August 14, 1991

11. Neurosensory systems

Neuropsychiatry Conference, Area Health and Education Centers Program, University of North Carolina

Chapel Hill, North Carolina, August 16, 1991

12. Migraine and the autonomic nervous system

Neurology Grand Rounds, University of North Carolina

Chapel Hill, North Carolina, October 28, 1991

13. Botulinum toxin in the treatment of myofascial pain syndrome

Pain Clinic Educational Conference, Mayo Clinic

Jacksonville, Florida, September 27, 1993

14. Botulinum toxin in the treatment of pain of myofascial origin

Neurology Grand Rounds, Mayo Clinic

Jacksonville, Florida, November 16, 1993

15. Testing of thermoregulatory sweating

Neurology Grand Rounds, Mayo Clinic

Jacksonville, Florida, August 2, 1994

16. Potential applications of botulinum toxin in the treatment of hyperhidrosis

Mayo Clinic Clinical Neurophysiology Teleconference on New Technologies

Jacksonville, Florida, November 20, 1995

17. Neurologic control of urinary bladder function

Urology Educational Conference, Mayo Clinic

Jacksonville, Florida, March 11, 1996

18. Update on myofascial pain syndrome

Neurology Grand Rounds, Mayo Clinic

Jacksonville, Florida, May 14, 1996

19. Paraneoplastic autonomic neuropathy benefitted by plasma exchange

Mayo Clinic Clinical Neuroimmunology Teleconference

Jacksonville, Florida, September 24, 1996

20. A sympathetic look at the faint and weary: Autonomic nervous system testing at Mayo Clinic

Grand Rounds, Mayo Clinic

Jacksonville, Florida, March 19, 1997

21. Nitrous oxide toxicity in a husband and wife sharing acute myeloneuropathy

Neurology Grand Rounds, Mayo Clinic

Jacksonville, Florida, March 25, 1997

22. Headache

Pain Clinic Educational Conference, Mayo Clinic

Jacksonville, Florida, March 14, 2000

23. Take with water: Headaches under the sea

Pain Clinic Educational Conference, Mayo Clinic

Jacksonville, Florida, February 6, 2001

24. Clone age ethics in the new millennium: The approaching revolution in human embryonic stem cell transplantation (Co-presenter Nancy L. Jones)

Grand Rounds, Mayo Clinic

Jacksonville, Florida, April 9, 2001

25. Ethics in the clinical setting: The ethics work-up (Co-presenters Edmund Pellegrino and Gavin Divertie) Grand Rounds, Mayo Clinic

Jacksonville, Florida, February 27, 2002

26. Dysautonomia in neurodegenerative disorders

Neurology Grand Rounds, Mayo Clinic

Jacksonville, Florida, November 11, 2002

27. Palliative sedation for intractable pain at the end of life

Pain Clinic Educational Conference, Mayo Clinic

Jacksonville, Florida, February 27, 2003

E. Mentoring

Faculty advisor

Faculty advisor to Peter Edenhoffer, M.D., neurology resident, University of North Carolina, 1990-1991; Dr. Edenhoffer; presently in private practice in Paris, TX.

Faculty advisor to Cynthia Bodkin, M.D., neurology resident, Mayo Clinic, Jacksonville, 2003-2006.

Career development

Andrea Tamer Abutara Neves, M.D., visiting fellow at Mayo Clinic in 1994 from Hospital das Clínicas, University of São Paulo, currently is on the neurology faculty at the University of São Paulo, Brazil.

Jay Van Gerpen, M.D., neurology fellow at Mayo Clinic in 1997-1998; present position is Assistant Professor of Neurology, Tulane University, and Neurology Consultant, Ochsner Clinic, New Orleans, Louisiana.