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## Documentation

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# A legal precedent for Nazi euthanasia

*Printed here is an abridged text of the Jan. 17 New Jersey Supreme Court decision in the case of Claire Conroy, an 84-year-old nursing home patient. The opinion was written by Associate Justice Sidney Schreiber.*

We hold that life-sustaining treatment may be withheld or withdrawn from an incompetent patient when it is clear that the particular patient would have refused the treatment under the circumstances involved.

The standard we are enunciating is a subjective one, consistent with the notion that the right that we are seeking to effectuate is a very personal right to control one's own life. The question is not what a reasonable or average person would have chosen to do under the circumstances but what the particular patient would have done if able to choose for himself.

The patient may have expressed, in one or more ways an intent not to have life-sustaining medical intervention. Such an intent might be embodied in a written document, or "living will," stating the person's desire not to have certain types of life-sustaining treatment administered under certain circumstances.

It might also be evidenced in an oral directive that the patient gave to a family member, friend, or health-care provider. It might take the form of reactions that the patient voiced regarding medical treatment administered to others. It might also be deduced from a person's religious beliefs and the tenets of that religion or from the patient's consistent pattern of conduct with respect to prior decisions about his own medical care.

Medical evidence bearing on the patient's condition, treatment and prognosis, like evidence of the patient's wishes, is an essential prerequisite to decision-making under the subjective test. The medical evidence must establish that the patient fits within the Claire Conroy pattern: an elderly, incompetent nursing-home resident with severe and permanent mental and physical impairments and a life-expectancy of approximately one year or less.

We recognize that for some incompetent patients it might be impossible to be clearly satisfied as to the patient's intent either to accept or reject the life-sustaining treatment. In such cases, a surrogate decision-maker cannot presume that treatment decisions made by a third party on the patient's behalf will further the patient's right to self-determination, since

effectuating another person's right to self-determination presupposes that the substitute decision-maker knows what the person would have wanted.

We hesitate, however, to foreclose the possibility of humane actions, which may involve termination of life-sustaining treatment, for persons who never clearly expressed their desires about life-sustaining treatment but who are now suffering a prolonged and painful death.

An incompetent, like a minor child, is a ward of the state, and the state's *parens patriae* power supports the authority of its courts to allow decisions to be made for an incompetent that serve the incompetent's best interest, even if the person's wishes cannot be clearly established. This authority permits the state to authorize guardians to withhold or withdraw life-sustaining treatment from an incompetent patient if it is manifest that such action would further the patient's best interests in a narrow sense of the phrase, even though the subjective test that we articulate above may not be satisfied. We therefore hold that life-sustaining treatment may also be withheld or withdrawn from a patient in Claire Conroy's situation if either of two "best interests" tests—a limited-objective or a pure-objective test—is satisfied.

Under the limited-objective test, life-sustaining treatment may be withheld or withdrawn from a patient in Claire Conroy's situation when there is some trustworthy evidence that the patient would have refused the treatment, and the decisionmaker is satisfied that it is clear that the burdens of the patient's continued life with the treatment outweigh the benefits of that life for him. By this we mean that the patient is suffering, and will continue to suffer throughout the expected duration of his life, unavoidable pain, and that the net burdens of his prolonged life (the pain and suffering of his life with the treatment, less the amount and duration of pain that the patient would likely experience if the treatment were withdrawn) markedly outweigh any physical pleasure, emotional enjoyment or intellectual satisfaction that the patient may still be able to derive from life.

This limited-objective test also requires some trustworthy evidence that the patient would have wanted the treatment terminated. This evidence could take any one or more of the various forms appropriate to prove the patient's intent under the subjective test.

Evidence that, taken as a whole, would be too vague, casual or remote to constitute the clear proof of the patient's subjective intent that is necessary to satisfy the subjective test—for example, informally expressed reactions to other people's medical conditions and treatment—might be sufficient to satisfy this prong of the limited-objective test. In the absence of trustworthy evidence, or indeed any evidence at all, that the patient would have declined the treatment, life-sustaining treatment may still be withheld or withdrawn from a formerly competent person like Claire Conroy if a third, pure-objective test is satisfied.