

Florida Bioethics

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<http://www.med.ufl.edu/chfm/ethics/fbn/>Email — ethics@miami.edu

Guardianship

Legislature Enacts Major New Provisions

Florida's Legislature has enacted two measures likely to have far-reaching effects on the way decisions are made for incapacitated patients. Both changes to state law, approved in the 2003 legislative session, address the role of guardians and other surrogates in end-of-life and other kinds of cases.

One measure provides for social workers to be deputized as guardians in cases in which no surrogate or family member is available. The other moves the Office of

the Statewide Public Guardian into the Division of Elder Affairs and calls for new education and licensure standards for guardians.

Apparently motivated by difficulty in many jurisdictions in finding guardians to make medical decisions, the Legislature approved adding social workers to the list of those authorized to make decisions for patients when no surrogate has been identified. That list — one of the best-known features of Florida Statute

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Schiavo Feeding Tube Removed, Replaced as Gov. Bush Intervenes

The 13-year saga of Terri Schiavo has leapt to the front pages of the nation's newspapers as her feeding tube was removed under court order, the Legislature approved a special bill against the withdrawal and Gov. Bush ordered the tube replaced, which it was.

The case has emerged as one of the most complex and bitterly contested end-of-life cases ever. At its core, the dispute pits Ms. Schiavo's parents, who want life support continued, against her husband, who does not. The parents say they represent her wishes; the husband says he does.

Ms. Schiavo, 39, has been diagnosed as being in a persistent vegetative state since 1990. Her artificial hydration and nutrition was discontinued at a Pinellas County hospice, but then replaced under the governor's order and with the Legislature's authorization

The Legislature approved a measure forbidding the removal of hydration and nutrition in the case because there is no written advance directive and because there is a family dispute.

A complete report on the case will appear in the next issue of *Florida Bioethics*.



Florida Bioethics Network

The Florida Bioethics Network is a program of

- Program in Bioethics, Law, and Medical Professionalism, University of Florida College of Medicine
- Bioethics Program, University of Miami
- Division of Medical Ethics and Humanities, University of South Florida School of Medicine
- Nova Southeastern University
- Florida State University College of Medicine

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The newsletter of the Florida Bioethics Network is edited by the University of Miami Ethics Programs: ethics@miami.edu

The Web site is hosted by the University of Florida Program in Bioethics, Law, and Medical Professionalism: fbn@chfm.health.ufl.edu

Florida Ethics Calendar

Please e-mail submissions to ethics@miami.edu

November 6-7, 2003, Kissimmee — The AARP and Stetson University's College of Law are sponsoring the International Conference on Aging Law and Policy. Issues in elder law, guardianship and health care quality are among those to be addressed. Information: 727-562-7830 or cle@law.stetson.edu.

November 7, 2003, Miami Lakes — The Florida Bar's Elder Law Section is sponsoring a CLE course titled "Conscious Aging in the Elder Law Practice: Cultural, Religious & Ethnic Diversity." Program features a number of sessions that address ethical issues. Information: 850-561-5831.

December 16-18, 2003, Miami — The Fifth Miami International Conference on Torah & Science will feature some of the leading thinkers in Jewish bioethics for a program titled "Absolute Standards in an Age of Relativity." The program, to be held at Florida International University, includes as sponsors FIU's Department of Religious Studies, The Shul of Bal Harbour, The Aleph Institute and *B'Or Ha'Torah Journal of Science, Art & Modern Life in the Light of the Torah*. Information:

<http://www.borhatorah.org>

January 9-10, 2004, Davie — Public policymakers, health care professionals and members of the public will debate health care access and policy at a third annual conference, "A Glimpse of the Future of Health Care in America" at Nova Southeastern University (NSU). Keynote speakers include Dr. Lisa Simpson, former deputy director for the U.S. Department of Health and Human Services' Agency for Healthcare Quality Research (AHRQ). The annual conference, held at NSU's Health Professions Division, will offer continuing education credits. Information: 954-262-1597 or 800-356-0026 (extension 1597); or <http://www.nova.edu/cwis/centers/hpd/allied-health/futurehealth/>.

April 16-17, 2004, Miami Beach — The **FBN's annual spring meeting** will feature an unprecedented collaboration with the American Society for Bioethics and the Humanities and the American Medical Informatics Association on a conference emphasizing the theme of ethics and health information technology. Information: <http://www.miami.edu/ethics>.

Legislature OKs Major Guardianship Changes

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765 – identifies and ranks those whom health professionals should turn to in seeking a proxy decision maker.

Under the new law, an institution may turn to a social worker at another institution to serve as a temporary guardian. The social workers would be selected by institutional ethics committees. Any decision to limit life-prolonging measures would need to be reviewed by an ethics committee. This requirement marks the second time the Legislature has required ethics committee review. The first is also laid out in FS765, the advance directive statute; it requires guardians of certain patients in persistent vegetative states to seek ethics committee review before a request to terminate treatment can be honored.

(It is this paragraph that also assigns a formal role to the Florida Bioethics Network – if the ward’s hospital or other health institution does not have an ethics committee the guardian must seek the services of a community ethics committee “approved by” the FBN.)

The legislation was not formally reviewed or approved by the state’s social worker, guardian or bioethics communities. The new law raises a number of questions:

1. How willing and able will social work departments be to releasing staffers for guardianship duty at another institution?
2. Precisely what criteria should ethics committees use in selecting a social worker to serve as guardian?
3. How many social workers can realistically be expected to obtain the necessary education (especially in light of other changes to guardianship curricula and licensure)?

The second measure approved by the Legislature and signed into law by Gov. Bush moves the Statewide Public Guardian Office to the Florida Department of Elder Affairs and creates a Guardianship Task Force within the Department. The Task Force is charged with reviewing the state’s guardianship practices and determining best practices.

“The Guardianship Task Force will be instrumental in addressing issues critical to guardians and the people they serve. It is also important that those Floridians who don’t need full guardianship have access to other forms of assistance,” said Gov. Jeb Bush, according to the Department of Elder Affairs. “I look forward to their recommendations on how we can best help to ensure that our most vulnerable citizens have access to guardians.”

The governor used the same phrase – “most vulnerable citizens” – in arguing unsuccessfully for a court-appointed guardian for a fetus in the case of a mentally disabled rape victim in Orlando. The woman gave birth to “Baby Girl S,” by C-section on Aug. 30 and was placed in the temporary custody of Florida’s Department of Children & Families. It is not clear if the new Guardianship Task

Force will take up the question of fetal guardians.

The Task Force has 10 members, each to represent and be appointed by one of the 10 entities named in the new law:

- Prof. Gordon T. Butler of Miami, St. Thomas University School of Law; law professor appointed by Secretary of the Department of Elder Affairs
- Judy Thames of Orlando, State President, Florida AARP; appointed by the Executive Director of the Florida AARP
- Ed Boyer, Esq., of Sarasota, Boyer & Jackson, P.A.; appointed by the Florida Guardianship Foundation
- David Brennan of Orlando; appointed by the Real Property Probate Section of the Florida Bar
- Judge Mel Grossman of Fort Lauderdale, Administrative Judge Probate Division of the 17th Circuit Court; appointed by the Florida Conference of Circuit Judges
- Dr. Karl Jones of St. Petersburg, psychiatrist; professional as stated by section 744.331(3) of Florida Statutes
- Kate Mingle of Port Orange, professional guardian; appointed by Florida State Guardianship Association
- Jed Pittman of New Port Richey, Pasco County Clerk of Court; appointed by the Association of Clerks of Court and Chairman of the Guardianship Task Force
- Randy Pople of Tallahassee, president and CEO of Capital City Trust Co.; appointed by the Florida Banker's Association
- Enrique Zamora, Esq., of Miami, Zamora & Hillman Law Firm; appointed by Elder Law Section of the Florida Bar

“The diversity of the members of the Guardianship Task Force will provide us insight into a myriad of issues relevant to public guardians,” said Elder Affairs Secretary Terry White in a statement released by his office. “The Department looks forward to working with the Task Force as they work together to review current practices and suggest ways to recruit more guardians.”

The Task Force is required to submit a preliminary report to Secretary White by January 1, 2004, and submit its final report to the Secretary by no later than January 1, 2005.

More information about the Statewide Public Guardian Office and the Guardianship Task Force is available by calling the Department of Elder Affairs at (850) 414-2000 or visiting <http://elderaffairs.state.fl.us>.

Only in Florida? Alien Cloning Announcement Produces Controversy, Anger — But No Baby

CHANTAL ABITBOL

Special to Florida Bioethics

HOLLYWOOD — The probe into the welfare of the world's first human cloning may have been dismissed, but the controversy and mystery surrounding cloned baby Eve — if she exists at all — is far from over.

Months after Clonaid first sparked a media frenzy over its claim of Eve's birth, the company still hasn't offered any proof that the baby is a clone, or even exists.

The company originally promised to conduct DNA tests. But the child's parents quickly reneged, Clonaid officials claimed, when opponents speculated over the child's well-being and pursued a court case to determine whether to appoint a legal guardian.

For all the hype, however, the inquiry proved to be anticlimactic.

Brigitte Boisselier, president of Clonaid, testified that the baby is living in Israel, prompting the judge to cite lack of jurisdiction and throw out the case.

Boisselier is a member of the Raelians, a religious group that believes beings from outer space created life on Earth. Its founder, a former French journalist who calls himself "Rael," established Clonaid in 1997.

Since Eve, the company announced the birth of four other cloned babies, and claims a second generation of up to 20 babies is on its way.

"All five babies are doing very well," Thomas Kaenzig, vice president of Clonaid, told *Florida Bioethics Network*. "They're all obviously monitored closely, and Clonaid has proven that human cloning is safe. The skeptics will be even more surprised when the DNA tests are published."

The company still hasn't set a date for such a disclosure.

Bernard Siegel, a Coral Gables attorney who filed a motion asking the Raelians to produce the baby, is trying to track down Eve through child advocates in Israel. He accuses the media of not investigating the matter vigorously enough.

"It's as if the media inoculated Clonaid from further scrutiny. That's a big mistake," said Siegel, who spoke about the case at the Florida Bioethics Network's spring conference in March.

The company "is now going to have every chance in the world to conduct these experiments with impunity. Even if Eve is a hoax, why shouldn't they be subjected to scrutiny?"

Siegel, a personal injury attorney and former pro-wrestling promoter, believes reproductive cloning is comparable to child abuse because it unduly exposes a child to problems encountered in the cloning of other mammals. He also fears the child will struggle with identity issues. He argued that Broward courts had jurisdiction because the company conducts business over the Internet in Florida and elsewhere.

"They had created a child without a medical safety net," said Siegel. "Just because you have the scientific ability to create a child doesn't give you the right to maim a child. Every medical organization has concluded that human cloning at this time has the risk of producing a child with severe genetic handicaps. At this time, [cloning] is an untested medical experiment and is immoral."

Jonathan Schwartz, Kaenzig's attorney, says it isn't so.

"Other than speculation and fear, there was nothing to justify child abuse," said Schwartz, who also argued that cloning is just an "offshoot" of *in vitro* fertilization — a procedure also once called "terrible" and "playing God," he

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Cloning Announcement Produces Controversy — But No Baby

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noted.

“All of these same fears and questions were made of the first artificially inseminated child created in 1981. Now she’s 20-years-old and doing fine,” he said. “The cloning procedure is fairly indistinguishable from IVF.”

Siegel also excuses the company of exploiting the child for financial gain.

“We are on the cusp of having a cloned person on this planet [whether] there are prohibitions or not. It will be worse if that child is shot from a cannon into a world unprepared to receive her.”

— *Attorney Bernie Siegel*
