2 Health Care Ethics Committee Determinations

In 1975, a *Baylor Law Review* article recommended using hospital ethics committees for end-of-life decision making.[1] Its author, Dr. Karen Teel, thought that "such an entity could lend itself well to an assumption of a legal status which would allow courses of action not now undertaken because of the concern for liability." A year later, the New Jersey Supreme Court, considering whether to permit withdrawal of ventilator support from Karen Ann Quinlan, adopted Teel's idea and endorsed ethics committees.[2] The New Jersey court's endorsement provided a crucial boost to the fledgling ethics committee movement, which has since become widespread in the United States. Most health care delivery organizations now have health care ethics committees (HECs), which make determinations, or recommendations, on request, regarding medical treatment in difficult clinical cases.

Unlike expert testimony and bioethics *amicus* briefs, HEC determinations are developed for use in clinical settings. Nevertheless, using HECs to influence the legal system has been a goal of not only Dr. Teel, but also of many HEC proponents. This chapter explores the interactions between HECs and law,

From: *Bioethics in Law*
By: B. J. Spielman © Humana Press Inc., Totowa, NJ

specifically the role of HEC determinations in judicial reasoning. Do judges treat HEC work as adjudicative fact? As legislative fact? Do they treat HEC determinations as normative facts?

1. HEC Determinations and Adjudicative Fact

Judges often treat HEC determinations as adjudicative facts. Some clinical or research cases have already been reviewed by an HEC, and a court treats this review as one of the facts of the case. Another potential use of HECs—as a source of other adjudicative facts regarding the case—is suggested in *Abdullah* v. *Pfizer*.[3] After an outbreak of cholera, meningitis, and gastroenteritis in Nigeria, a putative class action suit sought redress from Pfizer Pharmaceuticals for injuries arising from the experimental administration of an antibiotic. The case was initially filed in Connecticut, where Pfizer's Global Research and Development World Headquarters was located, and was subsequently transferred to federal court in New York. Plaintiffs brought an action under the Alien Tort Statute because Pfizer purportedly violated not only Food and Drug Administration regulations, but also the Nuremburg Code, the Declaration of Helsinki, the International Covenant on Civil and Political Rights, and customary international law.[4] Plaintiffs in a parallel case had alleged corruption and bias in the Nigerian judiciary. Pfizer made a motion to dismiss on several grounds, including forum *non conveniens*, a discretionary device permitting a court to dismiss a claim if the inconvenience to the defendant of the forum chosen by the plaintiff is out of proportion to its convenience for the plaintiff.

District Judge Pauley III decided that, even if his court had had subject matter jurisdiction, he would dismiss on the ground of forum *non conveniens*, noting that even the plaintiffs would find a Nigerian forum helpful. They would have to rely on local Nigerian hospitals, governmental officials, and injured persons to establish causation, injury, and damages. Interestingly, he

noted that plaintiffs would also rely on the treating hospital's ethics committee in Nigeria to obtain "knowledge of the relevant events." That is, he expected that the HEC could provide some of the "who, what, when, and where, and how" of the disputed events. The HEC could not do so, however, because it did not exist when the research began. Pfizer, whose actions created international controversy, had submitted to the Food and Drug Administration a letter of approval from the HEC that had been backdated to precede the start of the research.

2. HEC Determinations as Legislative Facts

Occasionally a judge will use an HEC's work—whether consistent or inconsistent with core legal norms—to represent the way HECs function. The actions of a Wisconsin HEC became such legislative facts, used by a Wisconsin Supreme Court Justice to inform (or warn) future judges regarding how HECs can actually work.

In 1992, the Wisconsin Supreme Court had considered the case of *In re Guardianship of L.W.*, a 79-year-old man who lay in a persistent vegetative state.[5] The trial court had set forth 12 criteria in its memorandum opinion to guide guardians who were determining whether forgoing life-sustaining treatment would be in the best interests of their wards. One of the criteria was "the recommendation, if any of a bioethics committee."[6] The Supreme Court said that it was not adopting all 12 criteria but was suggesting it was "an option" to consider the advice of bioethics committees.[7] The court went on to suggest that, "if [a bioethics committee] is available, the guardian should request it to review the decision, and should consider its opinion in determining whether it is in the patient's best interests to forego treatment."[8] Further, the court thought that a right to refuse treatment for incompetent individuals, if consistent with medical ethics as represented by an HEC, might serve a norm-enforcing function by protecting the integrity of the medical profession:

> The state's interest in protecting the integrity of the medical profession is not implicated in this case. *In re Guardianship of L.W.*'s physicians initiated the action by conditionally (i.e., if L.W.'s condition remained unchanged for another 4 weeks) requesting the guardian's consent to withdraw treatment. Their actions were consistent with current medical ethics in so far as approval was sought and given by the Bioethics Committee of Franciscan Health System. Current Opinions of the Council on Ethical and Judicial Affairs of the American Medical Association 2.18, "Withholding or Withdrawing Life-Prolonging Medical Treatment" (1986); Position of the American Academy of Neurology on Certain Aspects of the Care and Management of the Persistent Vegetative State Patient, 39 Neurology 125 (1989). Thus, a decision to withhold or withdraw treatment will not impugn the integrity of the profession. Indeed, the existence of a protected right to refuse treatment for all individuals, competent or incompetent, may, in a sense, protect the integrity of the medical profession. In the absence of such a protected right, physicians may be discouraged from attempting certain life-sustaining medical procedures in the first place, knowing that once connected they may never be removed. Conroy, 98 N.J. at 370, 486 A.2d at 1234. The existence of this right will prevent premature and rash decisions to allow a patient to die, and will remove the potential conflict for the medical profession between ordinary compassion and the Hippocratic Oath.[9]

The Wisconsin court had optimistically carved out a potentially significant role for HECs. HECs were understood to be guardians of the integrity of the medical profession. However, 5 years later, when the Court was considering the case of *Spahn* v. *Eisenberg* (*In re Edna M.F.*), the efforts of a different HEC, which were not consistent with legal norms, were viewed much less favorably, but still treated as legislative fact. Concurring with the court's decision not to permit forgoing life-sustaining treatment from the 71-year-old Alzheimer's disease patient who was

bedridden but not unconscious, Chief Justice Abramson wrote separately to clarify "the majority opinion's characterization of several aspects of the controlling case in the majority's decision, L.W.…" including the role the court had carved out for HECs:

> L.W. commented favorably on the role of the health care provider's ethics committee. Hospital or nursing home ethics committees provide an important forum for careful deliberation regarding the decision to withhold life-sustaining medical treatment. Based on the limited record before us, it seems that the committee reviewing the request by Ms. F.'s guardian did not function effectively. Had Ms. F. been in a persistent vegetative state and had an interested person objected to the withdrawal of nutrition, the circuit court stated that it would have been unable to give weight to the committee's purported determination that withholding of nutrition was the ethically proper course. The circuit court noted that no formal minutes or report of the meeting was produced at the hearing and that the committee members apparently functioned without either a shared body of rules or training in ethics. In fairness to the committee members in this case, it must be noted that the committee had only recently been formed and had deliberated in perhaps only one other case.
>
> The circuit court also seemed troubled, as am I, with the apparent focus of the ethics committee's investigation. The committee seemed to understand that its function was to reach a determination that would insulate the facility from legal liability rather than the determination that best comported with medical ethics. The focus of all participants in this fateful and difficult process should be on the propriety of taking action that will lead to a person's death. The health care facility's liability concerns must not be allowed to interfere with the guardian's efforts to assure the exercise of the ward's right to be free of unwanted life-sustaining medical treatment if the guardian has determined, in consultation with the physicians, that the ward is in a persistent

> vegetative state and it is in the ward's best interests to withhold such treatment.[10]

The Justice wrote that her comments regarding the HEC were necessary, because "further discussion of the application of *L.W.* to the present case is needed."[11] Although *L.W.* did not explicitly require an evaluation, she wanted courts to evaluate the work of HECs before giving them any normative weight. What she expected was that the HEC would practice procedural fairness, including functioning under an explicit set of rules, and that it would protect individual rights, including a ward's right to be free of unwanted life-sustaining medical treatment. If the HEC failed to meet these expectations, Justice Abramson wanted to limit future courts' normative uses of HEC determinations.

Unlike the Wisconsin Supreme Court, the Kentucky Supreme Court had, by the early 1990s, already anticipated the issue of HEC work that did not conform to core legal norms. In its *DeGrella* decision, the Kentucky court had given ethics committees veto power in nursing home residents' treatment decisions.[12] At the same time, the court recognized that not every such decision would be consistent with core legal norms. It had stated:

> If the attending physician, the hospital or nursing home ethics committee where the patient resides, and the legal guardian or next of kin, all agree and document the patient's wishes and the patient's condition, and if no one disputes their decision, no court order is required to proceed to carry out the patient's wishes…. [However, a] false or fraudulent, and collusive, decision is beyond the power of a court to approve before or after the termination of life-sustaining medical treatment.[13]

The Kentucky court had made clear in DeGrella that there would be an exception to its otherwise deferential posture toward HEC determinations if HECs violated basic legal norms. Because this exception had been established, the *Woods* v. *Commonwealth* court had no reason to limit the scope of the HEC role, even if

HEC work was poor (which the court did not think it was, in this case).[14] In fact, the court expanded the role of HECs in *Woods*, viewing them as norm-enforcing institutions that could substitute for judicial oversight. In *Woods*, the existence of HECs, properly constrained by core legal norms, was, thus, used as a legislative fact to persuade the guardian and the public that the statute would be safely implemented.

3. HEC Determinations as Normative Fact

For several reasons, HEC determinations can have greater potential than other bioethics materials to influence judicial reasoning. First, HEC determinations are, similar to trial court determinations, specific to a particular case; they address roughly the same set of facts and provide normative guidance for them. Second, the HEC's determination is rarely opposed by another HEC's determination.[15] These factors create the potential for judges to be more receptive to, and perhaps less critical of, HEC determinations than of other bioethics communications. Third, in several jurisdictions, as Dr. Teel hoped, legislatures or judges have assigned to HECs a legal role. Thus far, Davis' distinction between adjudicative fact and legislative fact has been used to analyze interactions between HEC communications and law. If a judge admits an HEC determination, however, the judge may also give it normative weight—in effect, treating it as normative fact.

In an especially contentious case from California, for example, the actions of Florence Wendland, the mother of Robert Wendland, suggest a suspicion that an HEC determination might be treated normatively by a judge. The facts and procedural history of the Robert Wendland case are complicated. However, to understand Florence Wendland's objection to admitting an HEC determination without examining or cross-examining the HEC's members, the following summary will suffice.[16]

Robert Wendland was a middle-aged man who was left severely brain damaged by a motor vehicle accident in 1993.

He was conscious and sometimes able to respond to simple commands, but was unable to speak, and was completely dependent on others for his care. At the time the California appellate court decided his case in 2000, he was receiving nutrition and hydration through a feeding tube. A 20-member ethics committee determined that it had no objection when his wife, who was also his conservator, ordered withdrawal of nutrition and hydration.

After learning of the decision to withdraw treatment, Florence challenged her daughter-in-law's conservatorship and subpoenaed all of the members of the ethics committee. Her subpoenas were quashed by the probate court. Florence then complained that, because her subpoenas had been quashed, the court of appeals of California "should not give any weight whatsoever to the committee's decision."[17]

The HEC's determination could have been used for a number of purposes, one of which would be to guide the court's normative decision making. Florence wanted to make sure that the unchallenged HEC determination was not treated as normative fact. The court declined, however, to reject the evidence of the HEC's determination. It wrote, "Even assuming for the sake of argument the trial court erroneously quashed the subpoenas (a matter we do not decide), we see no basis for rejecting the evidence on this issue adduced at trial."[17] In other words, the HEC determination could become at least adjudicative fact. But, after a discussion of the HEC's work, the appellate court noted that Florence had learned through an anonymous phone call of the plan to remove the tube.[17] By calling attention to the HEC's omission, the court hinted that it might not follow the HEC's guidance.

Florence Wendland's fear that the HEC determination might be treated normatively did not materialize. On further appeal, the Supreme Court of California, too, noted that Florence had learned through an anonymous phone call about the plan to remove Robert's feeding tube, and added that the HEC had not spoken

with Robert's mother.[18] Implicit in the judge's inclusion of these procedural omissions is disapproval of the HEC's work. The high court ultimately decided, against the recommendation of the HEC, that nutrition and hydration should not be withdrawn. Was Florence Wendland's concern completely unfounded? Do judges ever treat HEC recommendations normatively? Do they ever view the recommendations uncritically?

3.1. When Legislatively Required

Occasionally, judges are forced to treat HEC determinations as normative fact. Legislatures or regulatory agencies can assign a normative task to HECs by statute or regulation. When they do, the normative role that HECs have in the clinical setting carries over into judicial reasoning. This potential was made clear in a concurring opinion in the Texas case, *Nikolouzos* v. *St. Luke's Episcopal Hosp.*[19]

Texas has a "futility law"—a set of procedures enabling health care providers, without fear of liability, to refuse to provide life-sustaining treatment that patients and/or their families request. Under that law, when a patient has directed an attending physician to give life-sustaining treatment that the physician thinks is inappropriate, the physician may ask the HEC to make a determination regarding the appropriateness of the treatment. This is a step in the statutorily outlined process of either transferring the patient to another facility that will provide the treatment or letting the patient die without the treatment in the facility using the procedure.[20]

Consistent with the statute, a Texas HEC had determined that life-sustaining treatment requested by the family for Mr. Nikolouzos was "inappropriate."[21] A state appellate court dismissed, for lack of jurisdiction, an interlocutory appeal from a denial of two applications by the family for temporary restraining orders against the hospital. In a concurring opinion, however, Judge Fowler explained that, if the court had had jurisdiction, the HEC determination would have been a reason to exclude from

consideration a physician's report stating that Mr. Nikolouzos was not brain dead.[22] The Nikolouzos' had offered that report in the hope of extending Mr. Nikolouzos' life support. Judge Fowler wrote: "As for the proof already before the court from Dr. John Meyer that Mr. Nikolouzos was not brain dead, St. Luke's has pointed out, and the trial judge found, this evidence was irrelevant to the issue before the court. *Section 166.046* permits the withdrawal of life-sustaining care for patients who are not brain dead if the hospital's ethics committee has determined the care is inappropriate."[23]

Because HEC determinations had been assigned a normative task by Texas legislature, the HEC determination became for Judge Fowler an exclusionary reason—a reason that excluded certain facts regarding the status of Mr. Fowler's brain from the decision-making process.[24] Even if the court had found jurisdiction, the fact that Mr. Nikolouzos' brain was alive could not have been considered by the court; the HEC determination precluded it.

In Judge Fowler's concurrence, the HEC determination of the "inappropriateness" of medical treatment is, thus, more than an adjudicative fact. It also has normative weight that she hypothesized would guide judicial reasoning regarding an evidentiary matter, if the court had jurisdiction. Judge Fowler seemed to want to assure the family that the HEC determination was not the only factor preventing continuation of life support. The Nikolouzos family had not proven "by a preponderance of the evidence, that there is a reasonable expectation that a physician or health care facility that will honor the patient's directive will be found if the time extension is granted."[25] Because this proof that an alternative facility would cooperate was required by statute, Judge Fowler expected that the Nikolouzoses could not have prevailed on the merits.[26] The HEC determination, thus, was a normative fact in Judge Fowler's reasoning regarding a hypothetical in which the court would have had jurisdiction. The HEC determination would have been a reason not to honor the Fowler's directive. Because

of a legislative decision, the HEC determination's normative character would carry over into judicial reasoning.

3.2. At Judicial Discretion, When Not Inconsistent With Legal Norms

If judges are not required to treat HEC determinations normatively, they assess whether HEC work supports core legal norms in deciding whether to give HEC work normative weight. Sometimes they approve of the work the HEC has performed, and sometimes they find that it has not used fair processes or that it violates individual rights. A positive assessment often corresponds to assigning normative weight to the HEC determination.

In the Matter of AB is a case in which a judge assessed the HEC's work, approved of it, and used it in her reasoning. A 3½-year-old child lay in a persistent vegetative state in a New York hospital.[27] The child's mother wanted to withdraw ventilator support. The child's father, who was separated from the mother, supported the decision. Hospital policy did not permit forgoing treatment in this kind of case. The mother asked the court to rule that she had the authority to remove AB from the ventilator.

New York had no law directly on point. Judge Ling-Cohan relied, by analogy, on New York's Health Care Decisions Act, state public health law, and state case law to support the proposition that AB's mother had the authority to make a best interests decision to forgo life-sustaining treatment for her child. The mother had discussed the decision with family members, including the child's father, who agreed with her.

The judge acknowledged what the HEC had done, both substantively and procedurally. In particular, she noted that the HEC had guided AB's mother through an analysis similar to the best interests analysis articulated in New York state law. The HEC had met numerous times with the mother and others.[28] Partly on the basis of those meetings, Judge Ling-Cohan came to the conclusion

that AB's mother's decision making was well-informed, and found clear and convincing evidence that it was in the child's best interests to forgo treatment.[29]

Other judges have noted both procedural and substantive problems in an HEC's work. In *Rideout* v. *Hershey Medical Ctr.*, the parents of a 2-year-old girl vehemently protested forgoing life-sustaining treatment that the hospital "through its ethics committee [had determined] was an appropriate step."[30] The parents claimed they had been assured that the ventilator would not be turned off in their absence. Allegedly, however, while they were in another part of the hospital arranging to obtain legal help, they were informed over the intercom that their daughter's ventilator was being withdrawn. The Pennsylvania court of common pleas would decide whether to dismiss the hospital's objections to the parents' complaints that the hospital had violated their rights and those of the child under state and federal law, including the First and Fourteenth Amendments.[31] In overruling the hospital's objections, Judge Turgeon scolded the hospital for failing to protect individual rights. The court wrote:

> This case is truly exceptional, in that the hospital here unilaterally asserted, and in fact usurped, the minor incompetent's state privacy and/or federal liberty-based right to refuse life-sustaining medical treatment. In contrast, the Rideouts attempted to act, albeit too late, in the role traditionally asserted by the state, which is to act to preserve human life.[32]

Far from accepting the HEC determination uncritically, Judge Turgeon implied that the HEC's work, as part of the hospital's efforts to end life-sustaining treatment, contravened core legal norms. Responding to the HEC's and hospital's disregard for the family's moral views, Judge Turgeon declined to dismiss the parents' First Amendment and other claims.

4. Summary

Twenty years ago, when only a few HEC determinations had made their way into US courts, legal scholar Susan Wolf asked:

> Have courts chosen to defer to committee determinations or to ignore them?…Do the committees' determinations tip the scales of justice? Do the courts regard committees as better suited than the courts to decide, and so overturn committee determinations only in rare circumstances?

Wolf recommended that courts admit HEC determinations and then evaluate them on a case-by-case basis to decide what weight each deserves.[33]

Courts seem to be moving in the direction that Wolf recommended. Judges not only treat HEC review as adjudicative fact and, in rare instances, expect HECs to provide other adjudicative facts, such as in *Abdullah* v. *Pfizer*, but they also admit HEC determinations and then evaluate them on a case-by-case basis to decide whether each determination deserves normative weight. Courts have not automatically given HEC work normative weight unless a legislature, regulatory agency, or higher court requires them to do so, as illustrated in Judge Fowler's hypothetical in *Nikolouzos* v. *St. Luke's Episcopal Hosp*. Judges do not hesitate to criticize or reject HEC determinations that violate either law's core procedural norms, as *Spahn* v. *Eisenberg* illustrates, or law's core substantive norms, as *Rideout* v. *Hershey Medical Ct.* illustrates. However, HEC determinations may be given a normative role in judicial reasoning, as *In re AB* illustrates, if those determinations support core legal norms.

Judges use their assessments of HECs to make or modify law, as in *Spahn* v. *Eisenberg* (*In re Edna M.F.*), in which the unacceptable performance of an HEC was used as a reason to qualify the court's previous decision in *Guardianship of L.W.*, and in *Woods* v. *Commonwealth*, in which the expected role of

HECs as potential norm enforcers was a legislative fact that explained why upholding the challenged law would not result in abuse.

In Chapter 3, the determinations of institutional review boards are examined. Similar to HEC determinations, institutional review board determinations are made for purposes other than litigation and are used in a variety of ways in law.

Endnotes

[1]Teel K. The physician's dilemma: A doctor's view: What the law should be. Baylor L Rev 1975;27:6–9.

[2]In The Matter of Karen Quinlan, an Alleged Incompetent, 70 N.J. 10, 48–49 (1976).

[3]Abdullah v. Pfizer, 399 F. Supp. 2d 495 at 505.

[4]28 U.S.C. §1350.

[5]In the Matter of Guardianship of L.W., Incompetent: Paul J. Lenz, as Guardian Ad Litem, Appellant–Cross Respondent, v. L.E. Phillips Career Development Center, Guardian, Respondent–Cross Appellant, Eau Claire County, Respondent, and St. Francis Hospital, Respondent–Cross Appellant, 167 Wis. 2d 53, 98 (1992).

[6]*In re* Guardianship of L.W., 167 Wis. 2d 53, 66 (1992).

[7]*In re* Guardianship of L.W., 167 Wis. 2d 53, 73–74 (1992).

[8]*In re* Guardianship of L.W., 167 Wis. 2d 53, 89 (1992).

[9]*In re* Guardianship of L.W., 167 Wis. 2d 53 (1992).

[10]Spahn v. Eisenberg (*In re* Edna M.F.), 210 Wis. 2d 557 (1997).

[11]Spahn v. Eisenberg (*In re* Edna M.F.), 210 Wis. 2d 557, 573 (1997).

[12]Martha Sue DeGrella, by and through her Guardian Ad Litem, Homer Parrent, III, Appellant v. Joseph G. Elston, Appelle, 858 S.W.2d 698, 710 (1993).

[13]DeGrella v. Elston, 858 S.W.2d 698, 710 (1993).

[14]The Kentucky Supreme Court mentioned that the HEC had unanimously recommended that treatment be foregone. However, the question before the court was the constitutionality of the Kentucky statute, not Mr. Woods' treatment (he had died during the course of litigation).

[15]One exception is the Torres case, in which several ethics committees were invited to give their opinion. *In re* Conservatorship of Rudolfo Torres. NW2d 1984;357:332–341. Sup Ct of Minn.

[16]*See also* FlorenceWendland, et al., Petitioners, v. The Superior Court of San Joaquin County, Respondent; Rose Wendland, Real Party In Interest, 49 Cal. App. 4th 44(1996); Conservatorship of the Person of Robert Wendland Rose Wendland, Petitioner and Appellant, v. Florence Wendland, et al., Objectors and Respondents; Robert Wendland, Appellant, 78 Cal. App. 4th 517 (2000); Conservatorship of the Person of Robert Wendland, Rose Wendland, etc., Appellant v. Florence Wendland, et al., Respondents. Robert Wendland, Appellant; 2 P.3d 1065 (2000); Conservatorship of the Person of Robert Wendland, Rose Wendland, as conservator, etc., Petitioner and Appellant, v. Florence Wendland, et al., Objectors and Respondents; Robert Wendland, Appellant, 26 Cal. 4th 519 (2001); Conservatorship of the Person of Robert Wendland; Rose Wendland, Appellant v. Florence Wendland, Respondent, 2001 Cal. LEXIS 6484 (2001).

[17]Conservatorship of the Person of Robert Wendland Rose Wendland, Petitioner and Appellant, v. Florence Wendland, et al., Objectors and Respondents; Robert Wendland, Appellant, 78 Cal. App. 4th 517, 527 note 8 (2000).

[18]Conservatorship of the Person of Robert Wendland, Rose Wendland, as Conservator, etc., Petitioner and Appellant, v. Florence Wendland, et al., Objectors and Respondents; Robert Wendland, Appellant, 26 Cal 4th 519, 525 (2000).

[19]Spiro Nikolouzos by his wife, Jannette Nikolouzos, Appellant v. St. Luke's Episcopal Hospital, Appellee, 162 S.W.3d 678 (2005).

[20]Texas Health & Safety Code Ann. § 166.046 (Texas Statutes and Codes annotated by LEXIS NEXIS (R) (2005).

[21]Nikolouzos v. St. Luke's Episcopal Hosp., 162 S.W.3d 678 (2005).

[22]Nikolouzos v. St. Luke's Episcopal Hosp., 162 S.W.3d 678 (2005). Justice Wanda K. Fowler concurring opinion at 682.

[23]Nikolouzos v. St. Luke's Episcopal Hosp., 162 S.W.3d 678, 683 (2005).

[24]Raz J. Practical reason and norms. London: Hutchinson & Co., 1975 at 47–48.

[25]Nikolouzos v. St. Luke's Episcopal Hosp., 162 S.W.3d 678, 683 (2005), Justice Wanda K. Fowler concurring opinion at 683.

[26]Nikolouzos v. St. Luke's Episcopal Hosp., 162 S.W.3d 678, 683 (2005) Justice Wanda K. Fowler concurring opinion at 682.

[27]In the Matter of AB, an Infant, by Her Mother, CD, Petitioner, 196 Misc. 2d 940, (2003).

[28]*In re* AB, 196 Misc. 2d 940, 960 (2003).

[29]*In re* AB, 196 Misc. 2d 940, 960–961 (2003).

[30]Rideout v. Hershey Medical Ctr., 30 Pa. D. & C.4th 57, 60 (1995).

[31]When the hospital unilaterally decide to remove life-sustaining treatment from a child, the plaintiff parents and plaintiff estate filed complaints against the hospital for negligent and intentional infliction of emotional distress and for the violation of their common law rights, constitutional rights, and rights under 42 U.S.C.S. Sec. 1395 and 29 U.S.C.S. Sec. 794. The hospital filed preliminary objections to the complaint.

[32]Rideout v. Hershey Medical Ctr., 30 Pa. D. & C.4th 57 (1995).

[33]Wolf S. Ethics committees in the courts. Hastings Cent Rep 1986;16:12–15 at 12.