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## **Our Right to Live or Die**

*Legislators quietly pass new law amid Schiavo controversy*

The hand of death worked under a bright and broad spotlight last week.

On Thursday, the high-profile Florida medical-turned-ethical case of Terri Schiavo ended when Schiavo died two weeks after her feeding tube was removed. And on Saturday, Pope John Paul II passed away after battling several weeks worth of fevers and infections, and years of Parkinson's disease. While both demises were gripping the attention of the Treasure Valley, the Idaho State Legislature quietly and unanimously passed a bill aimed largely at preventing a Schiavo-type dilemma from happening here. On March 23, the hand of Gov. Dirk Kempthorne went into action, signing the Medical Consent and Natural Death Act into law.

Starting July 1, Idaho will have a priority list which dictates who has the right to make medical decisions for a person who can't, for whatever reason, make those decisions.

The new law also aims to help Idahoans create their own so-called "advanced directives," or legally binding documents often referred to as a living will and durable power of attorney, in which a person states whether they want to receive artificial life-sustaining procedures and names a person to communicate their wishes in the event the patient is incapacitated.

According to Robert Aldridge, a Boise attorney specializing in elder law and a co-author of the bill, legislators were not pushed into approving the law by some right-to-life zeitgeist arising out of the Schiavo case.

"We started all of this years ago," Aldridge said. "The Schiavo case had nothing to do with this except it heightened awareness during the process of passing this bill."

While the Legislature's timing on passing the new law is uncanny, Aldridge's assessment seems accurate. Already in 1973, the Legislature passed the Medical Consent Act, which, among other things, spelled out who was lawfully able to make medical decisions for the incapacitated. That was followed up with the Natural Death Act in 1988, which established a person's right to name the person who would make their medical decisions for them.

"Last year, we started doing a major rewrite because the laws didn't cover all contingencies," Aldridge said.

Because the laws overlapped in some areas, legislators deemed it appropriate to unify the two into one.

Rep. Nicole LeFavour, a Democrat from Boise, said she did not feel any partisan or right-to-life pressure to support the bill.

"Nothing in committee ever came up around that," LeFavour said. "This law is a tool that lets people state how they want things to go at the end of their life. It doesn't say you can or can't pull the plug, it lets you create a document that reflects your own moral values."

Last Friday, more than two dozen representatives from health care, hospice and other agencies met at Life's Doors Hospice in Boise to discuss the aftermath of the Schiavo case and the new law the Legislature passed. Such a gathering of interests was nothing new here; these reps hold similar summits four times a year under the umbrella of A Better Way Coalition, an organization designed to provide compassionate care for terminally ill people and the frail elderly.

**“What disturbs me most (about the Schiavo case and the new law in Idaho) is that people will get a living will and durable power of attorney without really thinking through what they want at the end of their life,”** said Kelly Buckland, a coalition member and the executive director of the Idaho State Independent Living Council.

After a diving accident in 1970, Buckland became paralyzed from the chest down. He told the group that the incident drastically changed his ideas about when he would want to discontinue so-called artificial means of sustaining life.

"A lot of people say things like, 'I'd never want to live like that,' but if the day comes when you are living like that, you may want to stay alive," Buckland said. "I just hope people don't start filling out these forms without the right knowledge."

"One thing is for certain, this is a teachable moment for the community," said Cheryl Simpson-Whitaker, the group's executive director. "And this teachable moment begins to stop once the next big issue hits the news."

Given that possibility, the group has decided to hold a seminar next month to explain how the new law helps protect end-of-life patients' rights. It will take place on May 17 at Shepherd of the Valley Lutheran Church in West Boise from 6:30 to 8 p.m.

In the meantime, here are some basics to get familiar with concerning end-of-life decision-making scenarios.

Under the new law, when an incapacitated patient has no advanced directive, that patient's legal guardian has first say about that patient's medical treatment. A person named within the patient's living will and durable power of attorney (a document that spells out one's medical treatment wishes and names a person to communicate those wishes when the patient is incapacitated) is next in line, followed by the patient's spouse, parents, other relative, other competent individual representing himself or herself to be responsible for the health care of the patient, and finally the attending doctor or dentist.

In other words, if the Schiavo case happened in Idaho, the husband's wishes would still override the parents' and siblings' wishes.

The new law also attempts to clear up instances in which a patient is able to swallow (does not need a feeding tube) but needs help in getting the food into his or her mouth. In this situation, assisted feeding is not considered an artificial life-sustaining procedure.

Again, if the Schiavo case happened here, there would be no difference. Since Schiavo could not swallow and needed a feeding tube (and had no document dictating whether to continue medical treatment once in a persistent vegetative state), it would be up to Schiavo's spouse to determine whether to disconnect the feeding tube.

*A Better Way has created a packet titled "The Right Choice," to explain the new Medical Consent and Natural Death Act. It is available through Better Way Coalition at (208) 429-1203 or by e-mail at [abetterway@cablone.net](mailto:abetterway@cablone.net).*