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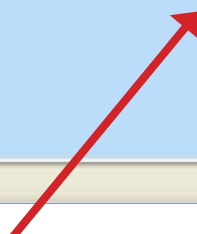
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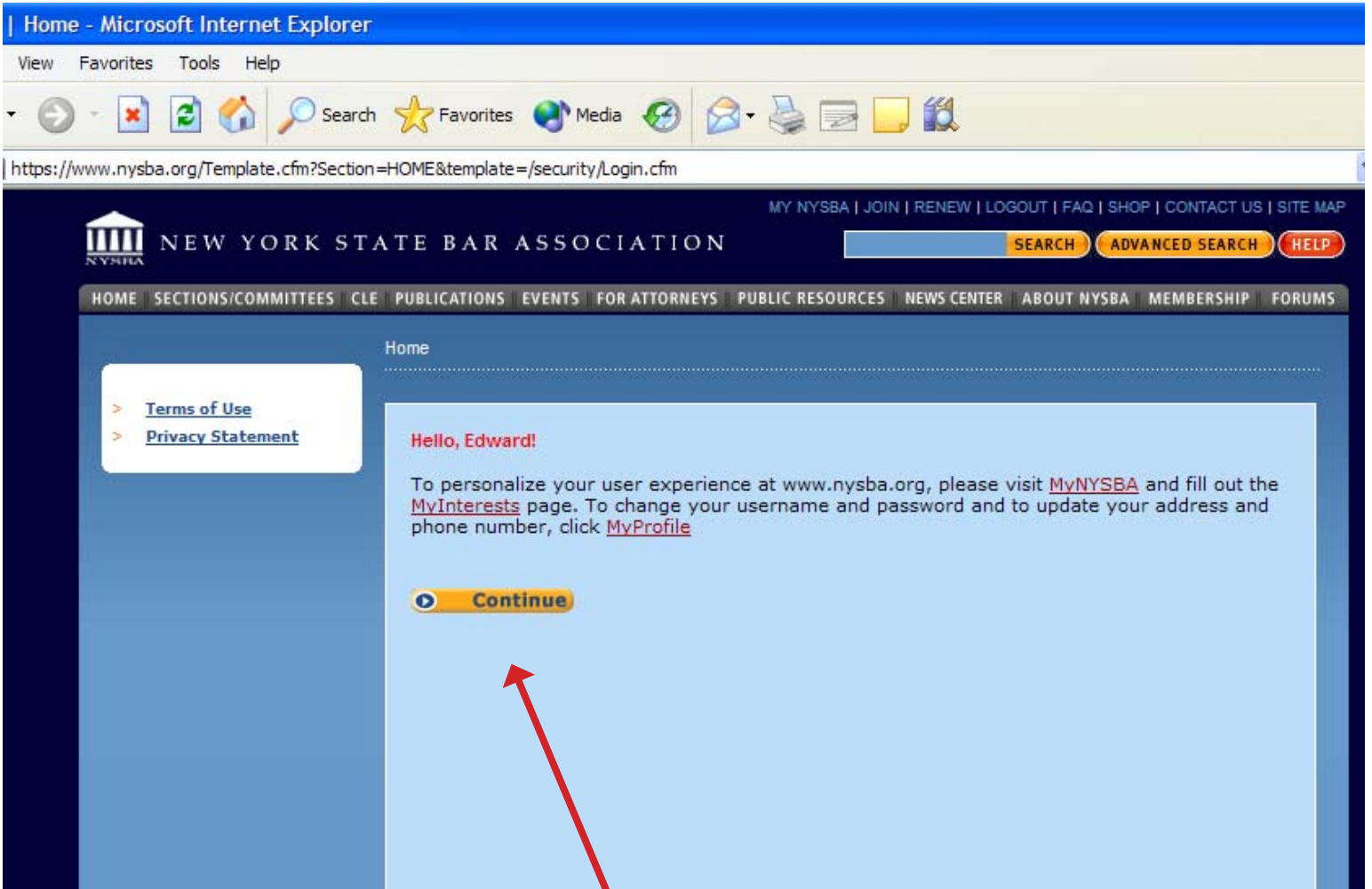
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IN THE MATTER OF M.B., 47 (N.Y. 2006)
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 IN THE MATTER OF M.B., 47 (N.Y. 2006)
 47.

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Decided March 23, 2006.
 Under the Health Care Decisions Act for Mentally Retarded Persons, a guardian can make health care decisions for a mentally retarded person, including the decision to terminate life-sustaining medical treatment, under carefully prescribed circumstances. The issue in this case — solely one of statutory interpretation — is whether the Act applies only to guardians appointed after its March 2003 effective date or whether it also affects the authority of persons already serving as guardians before March 2003. Based on the language and history of the Act, we conclude that the Legislature also granted existing guardians full health care decision-making authority, subject to the detailed procedures set forth in the statute.

Excerpt from case.

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New York Court of Appeals Reports

IN THE MATTER OF M.B., 47 (N.Y. 2006)

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2006 NY Slip Op 02235

IN THE MATTER OF M.B. (Anonymous). MENTAL HYGIENE LEGAL SERVICE,
Appellant, STATEN ISLAND DEVELOPMENTAL DISABILITIES SERVICES OFFICE, ET
AL., Respondents.

47.

Court of Appeals of the State of New York.

Decided March 23, 2006.

Jean Lin, for appellant.

Lisa Volpe, for respondents.

Opinion by Judge Graffeo. Chief Judge Kaye and Judges G.B.
Smith, Ciparick, Rosenblatt, Read and R.S. Smith concur.

GRAFFEO, J.:

Under the Health Care Decisions Act for Mentally Retarded Persons, a guardian can make health care decisions for a mentally retarded person, including the decision to terminate life-sustaining medical treatment, under carefully prescribed circumstances. The issue in this case – solely one of statutory interpretation – is whether the Act applies only to guardians appointed after its March 2003 effective date or whether it also affects the authority of persons already serving as guardians before March 2003. Based on the language and history of the Act, we conclude that the Legislature also granted existing guardians full health care decision-making authority, subject to the detailed procedures set forth in the statute.

Cases
include live
links to cited
cases and
statutes.

Background

Under New York common law, a competent adult generally has the right to make health care decisions, including the right to refuse life-sustaining treatment (*see Matter of Fosmire v. Nicoleau*, 75 NY2d 218 [1990]). If the individual suffers an illness or injury resulting in a loss of decision-making capacity, family and friends may obtain a court order authorizing the cessation of treatment if they can prove – by clear and convincing evidence of the patient's previously-expressed views – that the individual would have refused life-sustaining treatment if capable of making that decision (*id.* at 225).^[fn1]

Although a guardian of a mentally retarded person was imbued under the common law with the authority to make a broad spectrum of health care decisions, this authority did not encompass the power to end life-sustaining medical treatment. Viewing the

New York Court of Appeals Reports

MATTER OF FOSMIRE v. NICOLEAU, 75 N.Y.2d 218 (1990)

Clicking on the live link gives access to cases and statutes cited.

551 N.Y.S.2d 876, 551 N.E.2d 77

In the Matter of FRANCIS J. FOSMIRE, as Executive Vice-President of Brookhaven Memorial Hospital Medical Center, Appellant, v. DENISE J.

NICOLEAU et al., Respondents.

Court of Appeals of the State of New York.

Argued November 16, 1989

Decided January 18, 1990

Appeal from the Appellate Division of the Supreme Court in the Second Judicial Department, Saverio J. Fierro, J.

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Norton L. Travis, Leonard M. Rosenberg, Debra A. Silverman and Susan F. Scharf for appellant.

Donald T. Ridley for respondents.

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[EDITORS' NOTE: THIS PAGE CONTAINS HEADNOTES. HEADNOTES ARE NOT AN OFFICIAL PRODUCT OF THE COURT, THEREFORE THEY ARE NOT DISPLAYED.]

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Chief Judge WACHTLER.

In this case, an adult Jehovah's Witness refused to consent to blood transfusions prior to delivery of her baby and persisted in the refusal after losing a substantial amount of blood following the Cesarean birth of the child. Based on her doctor's affidavit that the transfusions were necessary to save her life, the Supreme Court in Suffolk County signed an order authorizing the hospital to give the transfusions over her personal objections. On application by the patient and her husband, the Appellate Division vacated the order. The hospital has now appealed to our court.^[fn1]

The hospital recognizes that in this State a competent adult has the right to determine the course of his or her own medical treatment, and may decline even lifesaving measures, in the absence of a superior State interest. The hospital urges though that this is the exceptional case because it believes there are certain State interests present here which should prevail over the patient's personal choice. The argument essentially is that the State has an overriding interest in preserving the life of a young, otherwise healthy person facing a risk of death which can be completely eliminated by a simple blood transfusion, and an even more substantial interest in protecting a minor child from the loss of the mother.

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