



Home

- > [Terms of Use](#)
- > [Privacy Statement](#)

Print this page Go >

Email this page Go >

### Become a NYSBA Member

There are [many benefits to becoming a NYSBA member](#). If you are not currently a member, [click here to join](#).

### Become a NYSBA.org Registered Web User

If you're not ready to become a full-fledged member, [click here to create an online account](#) which will allow you to benefit from some of our web site personalization features.

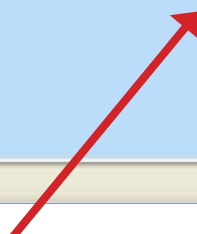
### Members & Registered users enter login information here

\* User Name or Membership Number :

Password:

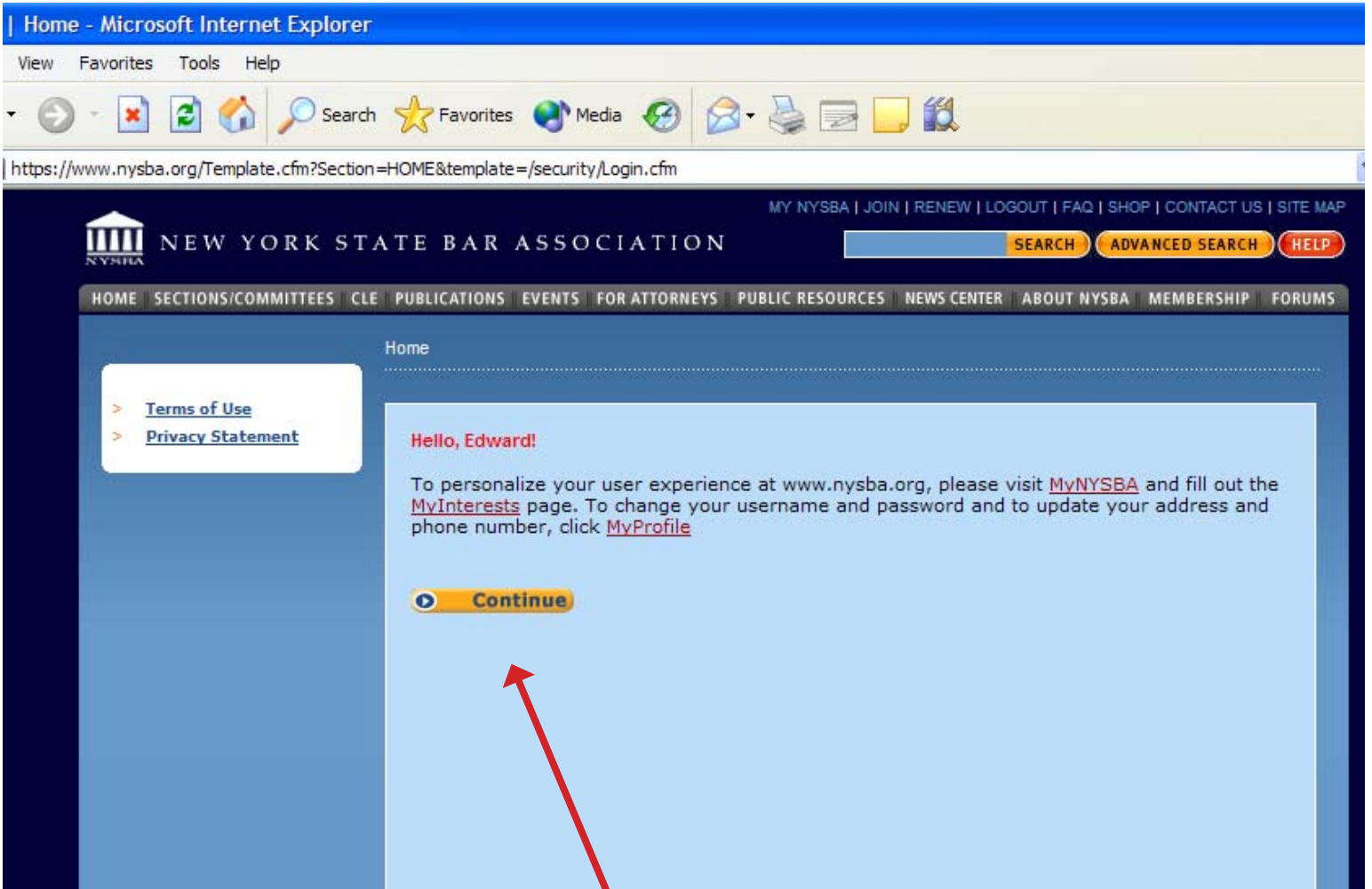
( [Need help logging in?](#) )

( [Forgot your password?](#) )



The NYSBA/Loislaw LawWatch CaseAlert Service is an exclusive NYSBA benefit. You must first login as a member to access this service.

Visit <http://www.nysba.org/casealerts> to sign up for NYSBA/Loislaw LawWatch Case Alert Service.



Click continue to sign up for NYSBA/Loislaw Law Watch CaseAlert Service.

Visit <http://www.nysba.org/casealerts> to sign up for NYSBA/Loislaw LawWatch CaseAlert Service.

Home

- > [Terms of Use](#)
- > [Privacy Statement](#)

Print this page GO >

Email this page GO >

## NYSBA/Loislaw LawWatch CaseAlert Service

Welcome to the NYSBA/Loislaw LawWatch CaseAlert Service. This free member benefit allows you to sign up to receive e-mail alerts of new cases in one of twenty areas of practice. Several pre-selected searches, each relevant to a particular area of the law, have been assigned to each practice area. As a member, you may elect to receive e-mail alerts in one of these areas- whichever one you choose. When a new decision that matches the search terms in your selected area is published, an excerpt from the case will be automatically e-mailed to you. In that e-mail, a link will be provided which allows you free access to the full text of the case.

You can opt in to this service by clicking the Opt In button below. Please confirm the e-mail address to which you want the e-alerts sent, and select the practice area of your choice. You will now begin receiving case alerts at the e-mail address you have designated.

To see an example of the format of the case alerts you will be receiving, or to view search-term summaries or Frequently Asked Questions, please select the links below.

[View a Demonstration of the Service](#) | [Summary of Search Terms by Area of Practice](#) | [FAQs](#)

**Full Name:**

**Preferred e-mail address:**   
*Email address is required*

**Area of Practice:**

By selecting the Opt-In button below you agree to receive the NYSBA/Loislaw LawWatch CaseAlert Service from the the New York State Bar Association at the e-mail address designated above. You may opt out of this service at any time in the future. The CaseAlert Service is a New York State Bar Association benefit and is provided free-of-charge to members.

Select an e-mail address.

Select an area of practice.

**CaseAlert Service**

- Antitrust Law
- Business Law
- Commercial Law
- Corporate Law
- Criminal Law
- Elder Law
- Entertainment Law
- Environmental Law
- Family Law
- Health Law**
- Immigration Law
- Insurance Law
- International Law
- Intellectual Property Law
- Labor Law
- Municipal Law
- Real Property Law
- Tax Law
- Torts Law
- Trusts and Estates Law

Health Law

Visit <http://www.nysba.org/casealerts> to sign up for NYSBA/Loislaw LawWatch CaseAlert Service.



MY NYSBA | JOIN | RENEW | LOGOUT | FAQ | SHOP | CONTACT US | SITE MAP



NEW YORK STATE BAR ASSOCIATION

SEARCH ADVANCED SEARCH HELP

HOME SECTIONS/COMMITTEES CLE PUBLICATIONS EVENTS FOR ATTORNEYS PUBLIC RESOURCES NEWS CENTER ABOUT NYSBA MEMBERSHIP FORUMS

Home

> [Terms of Use](#)  
> [Privacy Statement](#)

## NYSBA/Loislaw LawWatch CaseAlert Service

### Thank You

You are now subscribed to the list. If you wish to change this list selection visit the [LoisLaw LawWatch CaseAlert Service](#) page and unsubscribe from this list.

You will receive an e-mail confirmation of your subscription to the NYSBA/Loislaw LawWatch CaseAlert Service. When a new decision that matches the search terms in your selected area is published, an excerpt from the case will be automatically e-mailed to you. In that e-mail, a link will be provided which allows you free access to the full text of the case. You may unsubscribe from this service at any time by clicking the link that appears at the bottom of each message, or by returning to [this page](#).

Continue to [My NYSBA](#) Home Page.

Visit <http://www.nysba.org/casealerts> to sign up for NYSBA/Loislaw LawWatch CaseAlert Service.

**From:** <lawwatch@loislaw.com>  
**To:** Dan McMahon <dcmahon@nysba.org>  
**Date:** 3/24/06 12:57PM  
**Subject:** [nysbalw-hlth] LawWatch Hits

The NYSBA/Loislaw LawWatch CaseAlert Service, provided in conjunction with Wolters Kluwer Law & Business, is a benefit of membership in the New York State Bar Association. Visit [www.Loislaw.com](http://www.Loislaw.com) for more information regarding member discounts on Loislaw subscriptions.

\*\*\*\*\*  
 New results for Saved Search: "hlth-"health care"  
 \*\*\*\*\*

LawWatch searches for cases that fit the search criteria set up for the practice area you choose, and e-mails live links and case excerpts directly to you, as the cases are published.

IN THE MATTER OF M.B., 47 (N.Y. 2006)  
<http://www.loislaw.com/pns/flwhitview.htm?lwhitld=5152512>  
 IN THE MATTER OF M.B., 47 (N.Y. 2006)  
 47.

Click on link to view the full text of a case.

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.

Visit <http://www.nysba.org/casealerts> to sign up for NYSBA/Loislaw LawWatch CaseAlert Service.

## New York Court of Appeals Reports

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

Access the full text of the case,  
free of charge.

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).<sup>[fn1]</sup>

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.

Page 219

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

Donald T. Ridley for respondents.

Page 220

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

Page 221

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.<sup>[fn1]</sup>

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.

Visit <http://www.nysba.org/casealerts> to sign up for NYSBA/Loislaw LawWatch CaseAlert Service.