

Mary O'Connor's Story: Defining "Clear and Convincing Evidence"

Mary O'Connor was a 77-year-old woman and a former hospital administrator. She was left unable to make health care decisions and unable to eat after a series of strokes. She was demented and minimally verbal. Her daughter refused a feeding tube for her, testifying that Mrs. O'Connor said on several occasions that she would not want to live if she were unable to take care of herself and make her own decisions. Reflecting on a friend's dying, Mrs. O'Connor said it was "monstrous to keep someone alive by technology." Her daughter stated that she repeatedly said that she wanted, "no artificial life support to be started or maintained in order to sustain her life." A family friend also testified that Mrs. O'Connor had stated, "I would never want to be a burden on anyone and I would never want to lose my dignity before I passed away." The court ruled that this was not clear and convincing evidence that she would refuse a feeding tube. Why? Because her statements were primarily made in reference to people with cancer and she had a stroke. Furthermore, the court reasoned that although she made these statements numerous times over several years, it couldn't be sure that this was a "firm and settled commitment," opining that she may have just been reacting to a bad situation.

In the Matter of Westchester County Medical Center, on behalf of Mary O'Connor was a 1988 New York State Court of Appeals case. This case provided a definition of "clear and convincing evidence" of an incompetent patient's desire to terminate artificial life supports. Clear and convincing evidence requires proof that the patient held a firm and settled commitment to the termination of life supports under circumstances presented. The Court endorsed a Living Will or repeated oral expression as evidence of "clear and convincing evidence."

Excerpt from *In the Matter of Westchester County Medical Center, on behalf of Mary O'Connor*, p8.