

**IN THE CIRCUIT COURT FOR PINELLAS COUNTY,
FLORIDA, SIXTH CIRCUIT, PROBATE DIVISION**

IN RE: THE GUARDIANSHIP OF
THERESA MARIE SCHIAVO,
Incapacitated.

Ref#: 90-2908-GD-003

ROBERT SCHINDLER, et al.,
Petitioners,

v.

MICHAEL SCHIAVO,
Respondent.

//

**PETITION FOR EXTRORDINARY AUTHORITY
FOR THE WARD TO UNDERGO EXPERIMENTAL TREATMENT**

COMES NOW the Petitioner, ROBERT SCHINDLER before this court and alleges the following:

1. Petitioner, ROBERT SCHINDLER, has an interest in this proceeding as father and next friend of the ward, THERESA MARIE SCHIAVO.

2. Pursuant to Fla. Stat. § 744.3125(4)(c), Petitioner requests that the Court grant authority to a guardian ad litem to allow Mrs. Schiavo to undergo experimental treatment by functional magnetic resonance imaging (fMRI) of her brain to determine if she is in fact in a persistent vegetative

state (PVS) or rather in a minimally conscious state (MCS) and also to receive therapy using the VitalStim swallowing treatments.

COUNT ONE

3. In the February issue of *Neurology* (2005;64:514-523) (exhibit 1), Doctors Schiff, Rodriguez-Moreno, Kamal, Kim, Giacino, Plum, and Hirsch published a study that reveals a new diagnostic method of discerning the true nature of a neurological challenge. This study examined two adult male patients who were in a minimally conscious state (MCS) along with seven healthy volunteers. The test revealed through functional magnetic resonance imaging (fMRI) that the MCS patients had brain activity that was remarkably similar to their healthy counterparts when they were subjected to memory stimuli.

4. This study reveals that there is a new method of determining brain function and cognition that was not available in the past.

5. Theresa Schiavo was declared to be in a persistent vegetative state (PVS) in 2000 and again in 2002 before this method of diagnosis was available. It is possible that this method of diagnosis will reveal that her cognition is greater than first assumed by her doctors. Mrs. Schiavo might be classified as MCS, a cognitive definition which had only very recently been developed at the time of the 2002 medical hearing.

6. Mrs. Schiavo should be evaluated under this diagnostic method and examined for a possible cognition and a diagnosis of being in MCS.

7. At the trial held in October 2002 three doctors testified that there was no test at that time that would confirm that a patient has inner awareness. See trial transcript vol. V, page 813, lines 4-7 (Dr. Bambakidis); vol. VI, page 982, lines 11-16 (Dr. Greer); and vol. VII, page 1228, lines 1-8 (Dr. Cranford). (Exhibit 2).

8. The development of this new testing method has created a new method of testing inner awareness. Mrs. Schiavo has every possibility of being reclassified as MCS instead of PVS as a result of being tested by this new treatment.

9. Such treatment would be designed to preserve the life of Mrs. Schiavo and would benefit her life. If determined to be in a minimally conscious state, Mrs. Schiavo would not be subject to this Court's order to remove life support since that decision was predicated on this Court's finding that Mrs. Schiavo is in PVS.

10. If determined to be in MCS, this treatment would assist Mrs. Schiavo's doctors to determine a course of treatment that would allow her to regain her abilities to make her present wishes known to this Court and potentially remove or limit her incapacity.

11. This treatment is designed to directly benefit and preserve the life of the ward. Such treatment would also assist Mrs. Schiavo regain her abilities to speak for herself about her medical treatment and end of life wishes. This Court should direct the guardian ad litem to schedule Mrs. Schiavo for an fMRI evaluation.

COUNT TWO

12. Petitioner incorporates paragraphs 1-11 by reference.

13. VitalStim is a new treatment that has recently been given approval by the Food and Drug Administration for the purposes of treating oropharyngeal dysphagia. The procedure is designed to retrain the muscles of the throat. Successful treatments help patients regain their ability to swallow.

14. VitalStim therapy operates by sending electric charges at certain intervals directionally aimed at the target throat muscles. As the charges occur, the muscles contract in the way they normally would in the swallowing procedure. (Exhibit 3).

15. Repeated use and treatment can result in the muscles being retrained to swallow. Over ninety percent of patients using this therapy regain their ability past percutaneous endoscopic gastrostomy (PEG) tube feeding.

16. Mrs. Schiavo should be afforded the opportunity to be treated with VitalStim therapy.

17. Such treatment would be designed to preserve the life of Mrs. Schiavo and would benefit her life. Being able to eat on her own would prolong Mrs. Schiavo's life and remove the ignominious stigma of PEG tube feeding.

18. This treatment would allow Mrs. Schiavo to regain her abilities and potentially remove or limit her incapacity. By being able to eat and swallow on her own, Mrs. Schiavo could regain a life free of feeding tubes and enjoy food.

19. This treatment is designed to directly benefit and preserve the life of the ward. Such treatment would also assist Mrs. Schiavo regain her abilities to ingest food in a normal manner. This Court should direct the guardian ad litem to schedule Mrs. Schiavo for VitalStim evaluation and treatment by a local provider.

THEREFORE, the Petitioner requests this court to order the following relief:

A. Petitioner asks this court to appoint a guardian ad litem to act for the purpose of determining whether these new treatments are in the best interest of the ward.

B. Petitioner asks this court to appoint an independent attorney to represent the interests of Mrs. Schiavo in this matter of attempting to verify the benefit to her of these new technologies and therapies pursuant to Fla. Stat. § 744.3725(1).

22. Petitioner requests that independent medical, psychological, and social evaluations be conducted with respect to the ward to determine whether these new treatments are in the best interest of the ward pursuant to Fla. Stat. §. 744.3725(2).

23. Petitioner requests that the judge personally meet with the ward to determine whether these new treatments are in the best interest of the ward pursuant to Fla. Stat. § 744.3725(3).

24. Petitioner requests that the Court issue an order to allow the guardian ad litem to proceed with treating the ward with fMRI and VitalStim.

VERIFICATION

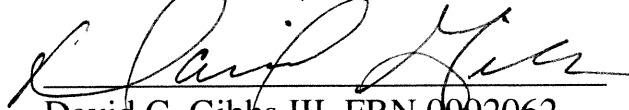
Under penalties of perjury, the undersigned verifies that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on February 23, 2005.

Robert Schindler

Respectfully submitted,

GIBBS LAW FIRM, P.A.



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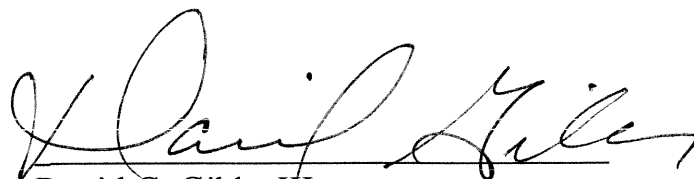
CERTIFICATE OF SERVICE

I CERTIFY that on this twenty-third day of February, 2005, a true and correct copy of the above Petition for Extrordinary Authority for the Ward to Undergo Experimental Treatment has been sent by United States mail, postage prepaid, to the following counsel of record.

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