

1 **DECLARATION OF DR. STANLEY A. TERMAN**

2 I, Stanley A. Terman, Ph.D., M.D., have personal knowledge of the facts stated in this
3 declaration and, if called as a witness, I could and would testify competently thereto under oath.

4 I declare as follows:

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6 1. I have been a member of the National Board of Medical Examiners since 1976 and the
7 American Board of Psychiatry and Neurology since 1980. I have been licensed to practice
8 medicine in the State of California since 1978. I received my M.D. from the University of Iowa
9 in 1975 and my Ph.D. from M.I.T. (in biophysics) in 1969.

10 2. On occasion, I have been asked to testify as an expert in the area of Decision-Making
11 Capacity, which can lead to judicial decisions on patients' mental competency.

12 3. I have published peer-reviewed articles in the field of determining Decision-Making
13 Capacity and I have also lectured and taught on this subject.

14 4. I have been writing a book on end-of-life decisions from the patient's perspective in
15 which I emphasize and exemplify that sometimes even if a patient can only answer "Yes" or
16 "No" it is still possible to determine what that patient wants in terms of end-of-life medical care.
17 For example, some people might want to prolong life as long as possible because of their
18 religious beliefs. Others might not want to prolong their lives -- after they balance the amount of
19 pain and suffering they have with their potential for recovery. An excerpt of one of the stories
20 from my book is attached, which was based on a composite of several of my actual patients.

21 5. I have reviewed several articles and material regarding Terri Schiavo. What I have read
22 includes, but is not limited to: Jay Wolfson, DrPH, JD, Guardian Ad Litem 's Report to Governor
23 Jeb Bush, dated December 1, 2003, which summarized 30,000 pages of documents that Dr.
24 Wolfson had available at that time; the article in the February 2005 issue of the Journal of
25 Neurology on fMRI; a news article on a patient who recovered after twenty years of not
speaking; most of the recent material regarding Terri Schiavo that appeared in the press and

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1 media including a published narrative written by Attorney Barbara Weller that described Terri
2 Schiavo's recent behavior, which included three distinctly different verbal sounds and two
3 distinctly different facial expressions [**Very Much Alive and Responsive**, [January 5, 2005;
4 <http://www.lifesite.net/>]; court testimony of Father Gerard Murphy in 2000; and the ruling of the
5 Florida Supreme Court decision that the so-called "Terri's Law" was determined to be
6 unconstitutional (approximately in September, 2004).

7 6. Due to my clinical experience in determining patients' Decision-Making Capacity, and
8 my experience in performing mental status examinations as a psychiatrist, I am willing, if I am
9 given the opportunity, to interview Terri Schiavo. I would sit at her bedside and ask her a series
10 of questions to determine whether or not she has emerged from the Minimally Conscious State;
11 and if so, whether her answers can be considered consistent; and if so, what her wishes are for
12 future care and treatment. I would require a face-to-face interview that might last several hours.
13 This would be best if done when she is minimally sedated, well rested, sitting up, as alert as
14 possible, and with as few distractions as possible.

15 7. I might need to repeat the interview on another day, to demonstrate consistency.

16 8. If the results of her response to certain neurological tests, for example the Functional
17 MRI, were similar to that of normal individuals with undamaged brains, such data might indicate
18 that there is some potential for her rehabilitation.

19 9. I think that a few days of testing could lead to results that experts could review, in order
20 to come to a consensus as to whether or not Terri might benefit from rehabilitation at this time.

21 10. My clinical position is that all living beings should be given every opportunity to express
22 themselves and should therefore be asked in the most diligent, careful, and patient way.

23
24 I declare under the penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

Executed this 21st day of February 2005, in San Diego, California.

Declarant initials: _____

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1 // S A Terman, MD //

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4 Dr. Stanley A. Terman, Declarant

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A Time To Be Sure

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3 My father had generally been a happy man who enjoyed many aspects of life. Sadly,
4 during his last four years, several strokes led to major deterioration. Once a successful electrical
5 engineer and active in both golf and tennis, now, all he could was sit in front of the TV in our living
6 room, and open his mouth to eat when someone (usually me) fed him or gave him a drink. I tried
7 to make his life more interesting by sharing the daily events of my life and by commenting on
8 what I noticed he watched on TV. I also tried to bring joy to his life by preparing his favorite foods,
9 even though they had to be pureed.

10
11 According to his neurologist, Dad had an "expressive aphasia." He could understand
12 language perfectly, but he couldn't talk at all. That's because one of his strokes knocked out the
13 part of his brain that is essential for creating speech. So, to learn what he wanted, I had to guess
14 by asking a series of questions. That may sound frustrating, however it usually didn't take long
15 before he stopped shaking his head "No," and nodded "Yes," instead. Still, I'm sure he missed our
16 regular conversations as much as I did. --No, definitely more since, after all, I could talk with other
17 people.

18
19 I could figure out how Dad was feeling from the expression on his face, whether or not his
20 eyes were keenly focused, and how much enthusiasm he showed as he shook or nodded his
21 head. Sometimes, Dad looked depressed but I never asked him directly since I feared asking that
22 question might make him wonder if he was a burden to me. Yet at other times, Dad would
23 brighten up, especially as we'd toss a volleyball back and forth. I loved to see him smile when I
24 fumbled or threw a wild ball. But his joy didn't always last. If he wanted to stop playing, he'd hold
25 on to the ball to signal that our game was over.

1 One day, Dad coughed up green phlegm and his temperature rose to 102. I called his
2 doctor and received a shock – some unasked-for advice. He said I should not feel morally
3 obligated to treat Dad's pneumonia, that before the antibiotic era, pneumonia” was called the
4 “friend of the old and sick.” I felt stunned as I hung up the phone. Dad’s doctor had just given me
5 a clear message that I could choose to let Dad die untreated. I looked at my father. He was so
6 sick that he couldn’t even respond, “Yes,” or “No,” to my questions. How could I make a life-or-
7 death decision for him, without knowing for sure what he wanted? I called the doctor back and
8 asked him to treat Dad aggressively. Dad spent five days in the hospital where he was treated
9 with IVs and antibiotics. He recovered completely from his pneumonia and returned home.

10
11 But he seemed even more depressed after he came home. He would refuse more meals,
12 even his favorites. He closed his eyes in front of the TV. Worst of all, he wouldn’t look at me when
13 I tried to talk to him. And when I threw him the volleyball, most of the time he held onto it right
14 away. That was his way of saying that he didn’t want to play at all.

15
16 One morning I woke up and realized I might have been avoiding the harsh reality of what
17 Dad was trying to tell me by his behavior – that he really didn’t want to live any longer.

18
19 I begged a psychiatrist to make a home visit. He spent more time talking to me than
20 trying to relate to Dad. I guess psychiatrists usually have patients who can talk. Any way, he
21 admitted that he little to offer. Even though he said antidepressants would not change the reality
22 of Dad's physical condition, he left a prescription to help Dad with his anxiety and sleep. He
23 suggested I called hospice, which surprised me since the neurologist did not consider Dad’s
24 strokes to be “terminal.” I had been under the impression that hospice accepted only patients who
25 were expected to die within six months. But when I called hospice, they informed me about their
new criteria. After I described what was going on with Dad, they said they would evaluate him for

1 the condition called "failure to thrive syndrome," which would be sufficient to enroll Dad in
2 hospice.

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4 I asked the hospice nurse how long Dad might go on living like this. She said he could
5 last many, many months. She only saw one way out. "Wait until your father gets pneumonia
6 again," she said, "and then do not treat him with IVs or antibiotics." Again I asked, how long? This
7 time she admitted, "It could be a year or more." I lost sleep myself, wondering whether Dad felt
8 trapped in his almost non-functioning body. Maybe Dad was depending upon me for a way out.
9 Maybe the first doctor had been right. Maybe that's why Dad was so depressed when he came
10 back from the hospital. I was desperate to learn what Dad wanted, but I didn't know how to I find
11 out, let alone be sure.

12
13 My brother, who lived in the Midwest, called every week. The next time he called, I
14 discussed my conundrum. I was surprised that my logical brother had something definite to offer.
15 He referred to statistics courses he had taken in graduate school, and stated: "If Dad answers a
16 number of questions consistently, **then** we could be certain about what he wanted." How many
17 questions? "To be 'within a reasonable degree of medical certainty,' scientists and doctors insist
18 on 95%. So if Dad answers **five** questions consistently, we could be sure. Let me explain: 0.5
19 times 0.5 times 0.5 times 0.5 times 0.5 = 0.03, so the level of certainty would be 97%." I nodded
20 my head and said, if you say so.

21
22 Some days were better than others for my father, so I decided to wait to pose the ultimate
23 question until one of his better days. When that occurred, I gave him a chance to play ball by
24 enthusiastically throwing the volleyball at him. He threw it right back. Then, I purposely did some
25 silly antics. I tossed the ball over his head and I pretended to strain as I stretched to make a
"difficult" catch. It worked! Eventually, I got him to smile. Then, I followed the plan I had previously

1 devised with my brother. I asked, "Dad isn't this a lot of fun?" I waited for him to nod or to shake
2 his head, but he just threw the ball back. Then I asked, "Doesn't it make your life worth living?"

3
4 But the very next time I threw the ball to him, he held on to it. Then he fiercely shook his
5 head to say, "No." I anticipated that might happen, so I had written down a number of questions,
6 to ask him. I knew I'd feel nervous, so I had a pad of paper nearby, to write down his answers.

7 This was our conversation:

8
9 1. Are you saying that life is NOT worth living for you?

10 *He nodded.*

11 2. Does that mean that you do NOT want to go on living?

12 *He nodded.*

13 3. Wouldn't you want to enjoy what you still can in life?

14 *He shook his head.*

15 4. Do you want to hasten your dying by not eating or drinking, as long as you are kept
16 comfortable?

17 *He nodded.*

18 5. Wouldn't you want to continue to eat, as long as I offer you your favorite foods?

19 *He shook his head.*

20 6. Are you and I talking about something that's of life or death consequences?

21 *He nodded.*

22 7. Are you glad I'm giving you the opportunity to express yourself?

23 *He nodded.*

24 8. Would you like to talk about something else, like this evening's newscast?

25 *He shook his head.*

 9. Do you NOT want to go on living?

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He nodded.

10. If you can be comfortable, would you want to continue to eat and drink?

He shook his head.

11. Would you like to hasten your dying?

He nodded.

During this entire conversation, Dad looked at me intensely. I asked many more than the minimum of five questions my brother said we needed, to reach "a reasonable degree of medical certainty," but still, it took only a few minutes. I wanted to avoid having any doubts later on. Still, there was a possibility that Dad's mood might be only temporarily down, so I ended our conversation with,

"Dad, I'm willing to honor your wishes, but I need to make sure you're not just having one bad day. Could we have another conversation like this one, again, say in a day or so. Okay?"

He nodded.

Two days later, every one of Dad's answers was the same....