

End of Life: Legal & Ethical Challenges of Critical Care Decision-Making

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Introduction

- Increasing Challenges in Critical Care Decision-Making at the End of Life
- Legal Issues and the Role of the Courts
- Ethical Issues and the Role of the Ethics Consult

Legal Issues

- Legal Framework
 - Injunction & Other Court Applications
- Medical Futility
 - Qualitative v. Quantitative Futility
- Consent/Autonomy – Rights of Patients and SDM's to Determine Care Provided
- Rights of Clinicians to Refuse to Provide Treatment believed to be Futile, Harmful or Contrary to the Patient's Best Interests
- Framing of Issue
 - Who Gets the Right to Decide? or
 - Should the Courts ever Force a Clinician to Provide Treatment that is believed to be Contrary to the Patient's Best Interests?

Court Cases

■ Setting the Stage

- *Re J (A Minor)*, [1992] 4 All E.R. 614 (CA).
- *Airedale NHS Trust v Bland*, [1993] 1 All E.R. 821.
- *Child & Family Services of Central Manitoba v L. (R.)* (1997), 154 DLR 4th 409.
- *C. (L.I.), Re* (2006), 59 Alta. L.R. (4th) 227.

Court Cases

■ Recent Cases

- *Sawatzky v Riverview Health Centre Inc.* (1998), 167 DLR (4th) 359.
- *Jin v Calgary Health Region* (2007), 82 Alta L.R. (4th) 36.
- *Golubchuk v Salvation Army Grace General Hospital*, 2008 MBQB 49.

Court Cases

■ Recent Cases cont...

- *Rotaru v Vancouver General Hospital ICU* (2008) BCSC 318.
- *I.H.V. (Re)*, (2008) ABQB 250.
- *Children's Aid Society of Ottawa-Carleton v C. (M.)*, (2008) CarswellOnt 5738.
- *Barbulov v Cirone* (2009) CanLII 15889 (Ont. S.C.)

Summary of Facts

■ Re IHV

- 68 year old woman with a constellation of conditions including terminal metastatic lung cancer and end stage COPD.
- Intubated and transported to Sturgeon Hospital. In a previous admission at Sturgeon the patient, while competent, has expressed a clear wish not to be intubated (documented on chart).
- One daughter who wanted active treatment stated patient had changed her mind. Other daughter stated she had not changed her mind and would want to die peacefully.

Summary of Facts

■ Re IHV cont...

- After many attempts no consensus could be reached with the family regarding withdrawal of treatment.
- Fearing that the ICU team would withdraw treatment, one daughter brought a guardianship and injunction application on less than 2 days notice.
- Because a potential injunction application had been brought to the attention of Legal counsel, an independent chart review by an Intensivist was obtained in time for use by the Court.
- An Ethics consult was also able to be conducted which supported the withdrawal of treatment.

Summary of Facts

■ Re IHV cont...

- Application April 4, 2008 - Court granted application of daughter to be guardian primarily because Public Guardian would not consent to appointment.
- Court refused injunction requested but temporarily restrained the ICU team from taking active steps to disconnect the ventilator until 72 hours after a copy of the chart had been provided to counsel for the Guardian (to allow time for Guardian obtain an expert opinion).
- Notice was given and the Guardian requested to be heard again April 11, 2008 - Court was unable to hear merits and adjourned to Wednesday April 16, 2008.
- Patient died late in the evening April 15, 2008, still on the ventilator
- Inordinate amount of stress caused to ICU team as a result of the terrible state of patient and the difficulties dealing with the family

Role of Ethics Consult

- What can an Ethics Consult offer?
 - facilitating the flow of information to enable informed decision-making on patient's behalf
 - helping patients, families, and SDMs to engage in a meaningful and useful conversation
 - nuanced, guided discussion to discuss preferences about treatments or interventions
 - Assist care team in making ethically justified decisions
 - recommendations, if appropriate

Questions?