THE LAW, DEATH, AND MEDICAL ETHICS

The case of Ms B and the "right to die"

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The High Court in England has ruled that doctors are acting illegally if they refuse to comply with a competent patient's request to switch off their ventilator even if the result would be death. If doctors feel unable to do this then they must arrange for the patient to be transferred to the care of a colleague who is prepared to comply with the request.

In March of this year the president of the High Court, Dame Elizabeth Butler-Sloss, together with several lawyers, gathered in a side room of an intensive care unit of a British hospital to hear evidence from a patient. This was the first time in the UK that evidence had been heard at a patient's bedside, and it was the first time that a patient had sought a declaration from the court that her doctors must comply with her wish to have her ventilator switched off even though this would result in her death.[1] Ms B, who cannot be named because of a court injunction, was a 43 year old woman who in 1999 suffered a haemorrhage into the spinal column in her neck. At that time she was told there was a risk of a further bleed and on the basis of this advice she executed a living will stating that if she became unable to give instructions, she wished for treatment to be withdrawn if she was suffering from a life-threatening condition. In February 2001 she had a further haemorrhage which left her paralysed from the neck down and unable to breathe without ventilator support.

In March 2001 after unsuccessful surgery she requested that her ventilator be switched off. She made further requests over the next two months, culminating in formal instructions to the hospital through her solicitor. Between April and August she was assessed by several psychiatrists and although initial assessments had concluded that she lacked capacity to refuse treatment, an independent assessment by another psychiatrist found her to be competent to make a decision to discontinue her treatment. From August 2001 she was treated by the staff caring for her as having capacity to make decisions. The clinicians responsible for her care refused, however, to discontinue ventilation, although they did offer as an alternative a "one way weaning programme" by which she would be gradually weaned off the ventilator with sedation being given if necessary. The weaning process was rejected by Ms B because of the length of time it would take (about three weeks) and the omission of pain killers as part of the treatment. Although she had initially participated in assessment for rehabilitation, she had refused referral to a spinal unit from September 2001, shortly after she was regarded as competent to make decisions about her treatment.

The clinicians looking after Ms B felt they could not agree to her request and switch off her ventilator because they considered they would be directly causing her death. One clinician said she felt she was being asked to kill her. There was also concern among some of the clinicians that Ms B had not experienced the full range of possibilities offered by a rehabilitation unit and that the intensive care unit was an abnormal environment in which to make such decisions.

In view of the conflict between Ms B and the clinicians caring for her it was suggested that her case be considered by the hospital ethics committee. The trust in question did not have a hospital clinical ethics committee, and it was stated that the health authority could not consider the case. An increasing number of National Health Service (NHS) trusts now have clinical ethics committees, several of which provide support and advice to clinicians on individual cases where conflicts of values arise.[2] Had the NHS trust caring for Ms B had a clinical ethics committee, it could have provided a neutral forum for clarification and discussion of the issues which may have led to a resolution without the need to apply to the High Court for a decision.

The main issue for the court to decide was, did Ms B have capacity to make an informed refusal of treatment. If she did, it would be unlawful to continue treating her against her will. The court found that Ms B did have capacity, and that she had been treated unlawfully by the hospital trust since August 2001. The declaration included guidance for future cases which stressed the importance of not confusing the question of mental capacity with the nature of the decision made by the patient, however grave the consequences. Ms B subsequently exercised her right to refuse treatment and her death was reported on the 29th of April.

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