

Patients' right to refuse treatment

The recent decision by the High Court to allow a woman paralysed from the neck down to end her life by refusing treatment upholds a competent patient's right to decline treatment, even if this would lead to his or her own death [Re B v NHS Trust 2002].

The ruling, that a woman known as Miss B could have a ventilator keeping her alive switched off, reinforces a doctor's duty to respect a competent patient's wishes. However, doctors facing difficult decisions such as this often need to seek clarification from the High Court before acting.

It is not unusual for doctors to be faced with patients who have decided that they do not wish to start or continue treatment. The Medical Defence Union (MDU) advises any doctor in this situation that a mentally competent adult patient has an absolute right to refuse medical treatment for any reason, rational or irrational, and the ruling in the case of Miss B upholds this right.

CAPACITY FOR CONSENT

In order to assess if a patient is competent to make such a decision, a doctor is required to assess the patient's capacity. Criteria for competence were expressed in the judgment of the High Court in the case of Re C [1984]. This case involved a schizophrenic patient who, besides having persecutory delusions, also believed he was a doctor of international repute. When he developed a gangrenous leg the surgeons wished to amputate to save his life. The patient refused. The judge ruled that in order to demonstrate capacity the patient needed to:

- Comprehend and retain the treatment information
- Believe the information given
- Weigh it in the balance to make a decision.

The fact that a patient's decision may appear irrational does not in itself

mean the patient lacks capacity. Re C also illustrates that even if a patient has a condition affecting his mental health this does not necessarily mean he lacks capacity. The patient did not have the operation and did not die from this particular condition.

Further guidance on assessing capacity has been issued by the British Medical Association and Law Society (British Medical Association, 1995). This guidance expands the three points further. The patient must be able to:

- Understand in simple language what the medical treatment is
- Understand its purpose and why it is being proposed
- Understand the main benefits, risks and alternatives
- Understand, in broad terms, the consequences of not being treated
- Retain the information for long enough to make an effective decision
- Make a free choice (i.e. free from pressure).

While in many cases such decisions can be taken without reference to the courts, in some cases, particularly where there is any doubt or dispute, an application to the court may well be advisable.

RESTRICTED CONSENT

Some patients, while consenting generally to treatment, may for religious or other reasons, refuse consent for specific aspects of treatment. Jehovah's Witnesses are such an example. The patient's belief does not change the situation. The patient who gives restricted consent (i.e. agreeing to an operation but forbidding blood transfusion) does not relieve doctors of their responsibility to provide other essential treatment. The MDU suggests the following procedure:

- Interview the patient with a witness and, if the patient wishes, a relative or religious adviser (Jehovah's Witnesses can provide

counsellors from local congregations at short notice)

- Explain to the patient the benefits of the blood transfusion and possible hazards if he/she does not agree
- Attempt to help the patient understand the reasons for your recommendation
- If the patient is adamant draw his/her attention to the clause on the consent form giving him/her the right to list procedures he/she does not consent to
- Make a note of the precise nature of the restriction placed upon you by the patient.

ADVANCE DIRECTIVES

Some Jehovah's Witnesses carry a card by way of an advance directive. Advance directives or living wills are becoming more common and occur where a patient wishes to make known his/her views about treatment of a condition that has not yet arisen or a current condition that may deteriorate in the future. An advance directive is made by a competent patient who wishes it to remain effective even if the patient him/herself becomes incompetent. Returning to the case of Re C [1984] the court effectively endorsed the patient's right to refuse life-saving surgery, even though he might have become incompetent by the time the need for the surgery arose.

The MDU's advice about advance directives is:

- Consider the directive carefully
- If the situation falls within the full terms of the directive, then treat it as the settled wishes of the patient and act accordingly
- Consider the possibility that the patient may have changed his/her mind
- The directive cannot direct you to do anything against the law.

Some organizations, such as the Terrence Higgins Trust, have now pro-

duced copies of advance directives for patients with a specified illness. These directives allow doctors in certain specialities to become familiar with a standard form.

Another case also confirmed the approach to accept advanced directives. AK was diagnosed as having motor neurone disease around his 17th birthday *Re AK* [2001]. The disease

was aggressive and by the age of 19 years he was only able to communicate by moving an eyelid. He was deemed to be competent and made a directive that he wanted his treatment, including ventilation, to be discontinued 2 weeks after communication became impossible. The health authority applied for a declaration that to discontinue ventilation was lawful.

Mr Justice Hughes said:

‘The law in relation to such a person, an adult of full capacity, is clear. In the case of an adult who has no mental disability and is of sound mind and has the capacity to make his own decisions, the court has no power to make decisions for him...’ HM

KEY POINTS

- Assess the patient’s capacity to withhold consent.
- If there is any doubt, or the consequences of refusing treatment are serious, seek a second opinion from a more senior colleague or a consultant psychiatrist.
- Document all consultations in the patient’s record.
- Where there is doubt or dispute it may be necessary to apply to the court – discuss with the legal department at your trust.

Emma Sedgwick

Medicolegal Adviser

The Medical Defence Union

London SE1 8PJ

British Medical Association (1995) *Assessment of Mental Capacity: Guidance for Doctors and Lawyers*. British Medical Association, London

Re B v NHS Trust [2002] <http://www.thetimes.co.uk/article/0,,12-247790,00.html> (accessed 28 March 2002)

Re C (adult: refusal of medical treatment) [1994] 1 All ER 819

Re AK [2001] 58 BMLR 151