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To treat or not to treat

This article discusses a recent Supreme Court of Western Australia case which examined a patient's right to refuse to consent to medical treatment.[1]

Case study

The patient, Mr Christian Rossiter, was admitted to a residential care facility, Brightwater, in Perth on 4 November 2008. As a result of three serious injuries, the patient was quadriplegic. The third injury, involving a fall on 3 March 2008, resulted in Mr Rossiter developing spastic quadriplegia. He was admitted to hospital where he underwent treatment and rehabilitation before being transferred to Brightwater for ongoing care in November 2008. At this time, the patient's capacity to move was limited to some movement in one finger and some foot movement. He had a tracheostomy and percutaneous endoscopic gastrostomy (PEG) tube. During his stay in the residential care facility, the patient informed his general practitioner and the nursing staff that he wanted to die. He asked his GP and the staff at Brightwater to discontinue the provision of nutrition and hydration through the PEG tube.

On 14 August 2009, the patient and Brightwater sought a declaration from the Supreme Court of Western Australia with regard to their respective rights and obligations. Specifically, the staff at Brightwater and the GP were concerned that compliance with Mr Rossiter's directions might result in criminal prosecution.

The key issue to be determined by the Court in this case concerned the legal obligations of a medical service provider which had assumed responsibility for the care of a mentally competent patient when that patient clearly stipulated that he did not wish to continue to receive medical services which, if discontinued, would inevitably lead to his death.

Evidence was heard from the patient's general practitioner that he had described to the patient, as best he could, the physiological consequences that would ensue during the process of starvation. The GP gave evidence that the patient had the capacity to comprehend and retain information given to him in relation to his treatment, and he had the capacity to weigh up that information and bring other factors and considerations into account in order to arrive at an informed decision.

A neuropsychology report was also served which concluded that Mr Rossiter was capable of making reasoned decisions concerning his own health and safety. In particular, he was capable of making decisions in respect of his future medical treatment after weighing up alternative options and was capable of expressing reasons for the decisions, which he made in that respect. The report also noted that Mr Rossiter unequivocally demonstrated that he understood the consequences of withholding the provision of nutrition and hydration through the PEG tube, and displayed insight into the consequences of that decision.

Ultimately, the question that was required to be determined by the Court was whether Brightwater was legally obliged to comply with Mr Rossiter's direction or, alternatively, legally obliged to continue the provision of the services to maintain his life. If the Court determined that Brightwater was legally obliged to comply with Mr Rossiter's direction, the Court was also asked to determine a subsidiary question: Mr Rossiter had asked his GP to prescribe analgesics for the purpose of sedation and pain relief as he approached death by starvation. The GP was concerned that he might face criminal prosecution in the event that he prescribed medication for these purposes.

The Court noted the common law position that an adult is assumed to be capable of having the mental capacity to consent to, or refuse, medical treatment. Another principle that was well established at common law was the right of autonomy or self determination. Included

within the right to autonomy is the right, described in 1914 in the United States by Justice Cardozo, of 'every human being of adult years and sound mind... to determine what shall be done with his (or her) own body'.[2] The corollary of this principle is that a medical practitioner or service provider who provides treatment contrary to the wishes of a mentally competent patient breaks the law by committing a trespass against that person. Therefore, at common law, the Court determined that Mr Rossiter had the right to determine whether or not he would continue to receive the services and treatment provided by Brightwater, and the staff at Brightwater would be acting unlawfully by continuing to provide treatment contrary to the patient's wishes.

The Court then went on to consider whether the Western Australian statutory provisions imposed a duty upon Brightwater to provide the necessaries of life to Mr Rossiter against his wishes. This included an analysis of the Western Australian Criminal Code. The Court concluded that the legislation in Western Australian did not in any way alter the clear position established pursuant to common law principles.

The Court then considered the provision of palliative care to Mr Rossiter following his withdrawal of consent to the provision of nutrition and hydration. Section 259(1) of the Criminal Code states:

> 'A person is not criminally responsible for administering, in good faith and with reasonable care and skill, surgical or medical treatment (including palliative care) –
> (a) to another person for that other person's benefit; or
> (b) to an unborn child for the preservation of the mother's life,
> if the administration of the treatment is reasonable, having regard to the patient's state at the time and to all the circumstances of the case'.
>
> The Court noted that the GP's obligations with respect to the provision of palliative care to Mr Rossiter if and when he directed Brightwater to discontinue the provision of nutrition and hydration were no different to the obligations that attend the treatment of any other patient who may be approaching death.
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> The Court made the following declarations:
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> (1) If after Mr Rossiter has been given advice by an appropriately qualified medical practitioner as to the consequences which would flow from the cessation of the administration of nutrition and hydration, other than hydration associated with the provision of medication, Mr Rossiter requests that Brightwater cease administering such nutrition and hydration, then Brightwater may not lawfully continue administering nutrition and hydration unless Mr Rossiter revokes that direction, and Brightwater would not be criminally responsible for any consequences to the life or health of Mr Rossiter caused by ceasing to administer such nutrition and hydration to him.
>
> (2) Any person providing palliative care to Mr Rossiter on the terms specified in s 259(1) of the Criminal Code would not be criminally responsible for providing that care notwithstanding that the occasion for its provision arises from Mr Rossiter's informed decision to discontinue the treatment necessary to sustain his life.

Discussion and risk management strategies

The role of the courts is to adjudicate particular cases on their facts, and not to discuss broader ethical issues. In this case, the Court made it quite clear that the judgment was not about euthanasia, nor was it about medical practitioners providing lethal treatments to patients who wished to die. The case was really about whether or not a competent adult patient had the right to refuse medical treatment, even if that refusal led to the patient's death. The Court confirmed that competent adults do have the right to refuse to consent to medical treatment. However, as with any rights, there are limits to the right to refuse medical treatment. Most obviously relevant is the competence of the patient. Decisions to refuse treatment often occur in cases where the patient's capacity to make such a decision may be impaired and medical practitioners have to be careful to properly assess any possible incapacity on the part of the patient.[3] It should also be noted that there are other exceptions to the right to refuse medical treatment which are primarily based on protection of the public or third parties, such as those involving pregnant women who refuse medical treatment and put their unborn child at risk. General practitioners are encouraged to seek advice from their medical defence organisation, or other adviser, in complex situations involving the refusal to consent to recommended medical treatment.

Conflict of interest: none declared.

References

1. Brightwater Care Group (Inc) v Rossiter [2009] WASC 229.
2. Schloendorff v Society of New York Hospital 211 NY 125 (1914).
3. Kerridge I, Lowe M, Stewart C. Ethics and law for the health professions. Annandale: The Federation Press, 2009.

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