

Informed Consent, Surrogate Decision-Making & Patient's Ability to Direct her Care – Liberty or Privacy Right at Law, and Patient Autonomy in Ethics.

Case

A 72 year old woman was admitted to the Neurological Intensive Care Unit following a cerebral hemorrhage which left her with severe brain damage and ventilator dependent. One year before this event, the patient and her husband had drawn up “living wills” with an attorney. The patient's living will specified that the patient did not want ventilator support, or other artificial life supports, in the event of a terminal condition or a permanent vegetative state.

The patient's husband is her legal next of kin and the person with surrogate decision-making authority. When the living will was discussed with him, he insisted that the patient had not intended for the document to be used in a situation like the present one. By this, the husband apparently meant that although the patient would not be able to recover any meaningful brain function, her condition was not imminently terminal. The husband did not consider his wife to be in a permanent vegetative state.

The treatment team allowed a week to pass, with the goal of providing the husband more time to be supported in his grief and to see how ill his wife was. Nevertheless, at the end of this time, the husband was unwilling to withdraw life support measures consistent with the patient's wishes as expressed in her living will.

Questions

- What should be done?
- What are the legal and ethical parameters?

Case Discussion

Specific legal issues:

- Patient is unable to provide her own informed consent for medical care. Informed consent means making a medical treatment choice and includes the choice of non-treatment. What is known about the patient's wishes for continued medical treatment under her current circumstances?
- The patient's Advance Directive is strong evidence and significant in determining what the patient would want for substituted judgment. Since the patient's husband (her legal surrogate) only made vague statements as to why he thought she would want continued care under these circumstances and the husband's perspective was contradicted by their

Informed Consent, Surrogate Decision-Making & Patient's Ability to Direct her Care – Liberty or Privacy Right at Law, and Patient Autonomy in Ethics.

adult children - it appears the situation requires further communication efforts, e.g., patient care conference, ethics consult.

- If these additional communication efforts fail to resolve the impasse - one legal/risk management approach may be to go forward with withdrawal of life support under the following conditions:
 1. Verify that the content of the patient's Advance Directive is consistent with a decision to forego further life-sustaining measures. Check, if possible, with those persons who were present when she prepared/signed the document to gather further information about the patient's intentions.
 2. Affirm that the requisite clinical determination(s) were made ("terminal" or "permanent unconscious" conditions) to activate the patient's Advance Directive. Check to make sure the clinical determination is well-documented in the patient's chart.
 3. Affirm consensus among the medical team about: the clinical determinations; the appropriateness of withdrawing life support as in the patient's best interests; and that withdrawal is consistent with her Advance Directive.
 4. Set a final patient care conference with the family members to review the patient's prognosis and the medical team's decision to withdraw care at a specific future date and time. This advance notice of planned future action allows the patient's husband an opportunity to seek judicial review or arrange for a transfer of care to another medical facility before the withdrawal of care. Under the circumstances, if the husband sought such review or transfer, the patient would need to be continued on life support pending completion of review or transfer. The legal benefit of this notice and time to act is it eliminates any claim that the hospital unilaterally took irreversible action without the family's consent or at least without their acquiescence. This course of action would also break the stalemate of the patient's situation and force a resolution.