

Must We Always Obey the Health Care Agent?

Dr. Kenneth Prager addressed a large audience at this last Arnold P. Gold Foundation *Ethics for Lunch* event of 2007-2008. The case he presented was one that had been considered by the NYPH Ethics Committee.

The case involved a 66 year old male treated for prostate cancer, a history of drinking and 3 previous minor strokes. He was found unconscious by the police in his apartment with an empty tequila bottle by his bed, after 25 years of sobriety. Prior to this incident, his wife reported that he was a very independent and functional person, a former star athlete who prided himself on his athletic prowess. At the hospital he was intubated and showed cranial hemorrhage and trauma. Previously, he had signed a health care proxy appointing his wife as his health care agent. The wife expressed immediate concern about the neurological recovery of her husband. The doctors gave a mixed prognosis, one neurologist spoke of a good chance of recovery while a second neurologist was less optimistic. The wife at this time began requesting the removal of life support. Furthermore, she refused both a tracheotomy and a feeding tube for her husband. The neurology attendings requested an ethics consult.

The wife was very pessimistic about his chances for recovery and expressed her concern about the financial burden of care that she would be dealt should he continue to live in his current state. Furthermore, she felt that he would neither want to live in his current state, nor with the future disability awaiting him and the rehabilitation required. His living will suggested that the agent may be unaware of his feelings concerning food and hydration. Technically, these could not be withheld under New York state law unless there was clear and convincing evidence, which led the wife to threaten legal action should the hospital insert a feeding tube and perform a tracheotomy. This disagreement between the agent's wishes and the autonomy of the patient led to intense ethical conflict.

In prior times, the patient had told his wife that he would never want to be left severely impaired and she must promise that she would never let him end up that way. However, this specific situation was never addressed. Were his previous words applicable to the current situation where he had a chance of a complete recovery, or possibly a significant chance of very limited recovery? His advance directive posed another issue over his autonomy when he stated that he would not want his life to be prolonged with a terminal condition, or if the physicians believed there was no chance of a recovery from a condition. These two statements, however, did not apply to him, since his condition was not terminal and the doctors felt that there was a chance of recovery. Furthermore, in cases such as this where the doctors do not know what the patient would have wanted and his health care proxy does not apply, it is normally left up to the health care agent to make decisions. Although the agent should know the patient's wishes better than anyone else, if this type of circumstance had never been discussed, is his agent still a good predictor of what the patient would have wanted? These issues all collided with the doctor's duty of beneficence.

The doctors felt uneasy withdrawing life sustaining support for the patient given his chances for recovery and the agent's insistence on removal of life support . The agent was rejecting treatment for the patient when there was a 35% chance of complete recovery, which was a good prognosis in the minds of the physicians. This was ethically troubling for the physicians. The agent's worries about the burden that would be put on her life and finances led them to be fearful that she was making decisions based on what was in her own best interest. This question of the agent's motives further complicated the situation and the ethical responsibilities of the physicians. Furthermore, in discussions with the Ethics Consultant, it became clear that the agent did not comprehend the situation fully. She had misinterpreted the diagnosis of a 35% chance of complete recovery to be a 30% chance of recovering only partial mental functioning. This was quite inaccurate, and the doctors believed that it would be ethically unsound to allow her to make a decision in the patient's best interest when she did not understand the prognosis.

The Ethics Committee met with the agent and her father who both made a strong case that the patient's current state and questionable recovery was not something he would tolerate, given his pride and vanity and therefore, the ventilator should be removed. The Ethics Committee felt that though they disagreed with the agent and her father, they had no reason to not respect their wishes since they appeared to act in the best interest of the patient and to be of sound mind. Although several members believed that the agent may have been acting in her own best interest, they agreed the doctors should extubate the patient.

Within a week, the patient began to improve and regain function. Initially, the wife was overjoyed by her husband's improvement and idea of having him back in her life. This excitement was short-lived, however, as her husband's temperament began to change. While his mental functioning and capacity improved, he was now violent with her to a dangerous degree. She eventually had no choice but to put her husband in a nursing home where he would not be a threat to himself, or anyone else. So what at first appeared to the wife to be a miracle, soon turned into a nightmare. She was left not only to deal with his dramatic personality change, but also the expense of his living the remainder of his life in a facility. This left her angry with the doctors as she believed the entire situation she was now burdened with could have been prevented had the hospital respected her initial decisions regarding her husband's care.

This case left the physicians grappling with the legal stance of both the agent and the physicians. Must they always obey the health care agent? Assuming the agent acts in good faith with his/her role in the patient's treatment, the agent may not be held liable for any decision, nor can the physician be held liable for any action taken under the presumption that the agent acts in good faith. If a physician feels uncomfortable complying with the decisions of the agent, the physician has the option of finding another physician willing to act in accordance with the decisions of the agent.

Dr. Prager posed several questions to the audience beginning with could this outcome have been prevented? At what early point would it have been acceptable for a decision

to have been made regarding the patient's treatment? Of course in the early stages, the prognosis is more uncertain, hence it is harder to make decisions that would reflect what the patient would have wanted. Furthermore, when a person appoints an agent to decide his or her fate, is the physician, in an attempt to be beneficent to the patient by prolonging treatment, disregarding the autonomy of the patient by not complying with the preference of the agent? Who is to decide if the agent is acting appropriately and what gives a physician the right to intervene concerning the wishes of the appointed agent?

These and other questions led to a most stimulating case presentation that challenged the audience to consider profound ethical dilemmas. All appreciated the lunch that was provided due to the generosity of the Gold Foundation.