

BEYOND THE LAW:

A Philosophical Note

by Hans W. Uffelmann

patient's expressed wishes without serious reason consistent with patient's best interests loses any right to inherit under the patient's will. No civil or criminal liability will result if health care personnel follow the Declaration in good faith. However, if they do not follow the Declaration and do not have a serious reason, they may be accused of unprofessional conduct.

Conclusion

The final paragraph of the act states that the act does not condone, authorize or approve mercy killing or euthanasia, and that affirmative or deliberate acts or omissions to shorten or end life are not permitted. Although it may be inferred that the Legislature intended to deny approval of actions which affirmatively shorten life, such as deliberate overdose of a pain killing drug, this language seems to contradict the purpose of the Act as a whole. Any withdrawal or withholding of treatment does in fact constitute an act or omission shortening the patient's life, the very acts this law allows.

The Death Prolonging Procedures Act does allow terminally ill patients to have a natural, dignified death. Admirably it moves Missouri into the group of states addressing this issue. Regrettably, it leaves the medical profession, the legal profession, and the citizens with a new set of questions and problems.

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The laws of society reflect its moral values. Therefore, an application of those laws to specific cases is a matter of both legal and ethical decision making. As a philosopher I shall comment on several ethical implications of Missouri's recently enacted law, Senate Bill 51, which took effect on September 28, 1985. The development and use of high technology in health care, including the ability to keep persons alive indefinitely while connected to life-support systems, has given rise to unprecedented dilemmas in ethics, law and public policy, as well as in religious thought. Also, the distinction between quantity and quality of life adds to the frequency and severity of the dilemmas encountered in decision making. Since the enactment of the California Natural Death Act in 1976, more than thirty states have passed similar statutes. This reflects a significant shift from the traditional paternalism on the part of individual health care providers and the courts towards a more enlightened philosophy that acknowledges the values of autonomy and beneficence. In doing so, legislatures are responding to the concerns of persons who, when faced with the inevitability of their own deaths, wish to maintain indirect control over the extent and the quality of their lives at a later time,

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when they will be unable to exercise such control directly. The value of beneficence is reflected in the best interest of the patient doctrine. It requires that physicians and others acting on behalf of the terminally ill patient (e.g., family members and attorneys in some jurisdictions) exercise judgment which they genuinely believe to represent the needs, desires, and wishes of the terminally

ill patient, including the decision to discontinue life-supports.

Following the precedent of over thirty other states, the Missouri Death Prolonging Procedures Act of 1985 is the beneficiary of the deliberation and experience of those states with this type of legislation. Unfortunately, however, the Missouri statute contains flaws inherent in those laws of other states, including the omission of the rights of incompetent patients, the thorny issue of the document's status concerning suicides, and the arbitrary distinction between therapeutic and palliative treatment and procedures, to name only a few difficulties found in almost all such statutes. Another difficulty which the Missouri law shares with others is the problem of definitions. Many key terms and phrases are ambiguous and provide decision makers with problems. For example, terminal illness means that the patient has a short time to live, but the law does not specify the meaning of short time. Also, the fact that a physician may override the wishes of a declarant for serious reasons leaves open discretionary options due to the lack of clarity in the definition. Examples of this kind are many and are certainly not unique to the Missouri law. Of course, such ambiguity may be looked upon favorably by most decision makers, including physicians and family members, because it provides flexibility and allows for wide latitude in the interpretation and implementation of the document. From a practical point of view, this is a positive feature favoring the decision makers. On the other hand, this plasticity in the law entails real danger for the abuse of power. It may allow decisions based on values contrary to the intentions of the terminally ill patient, undermining the very purpose of the law. Under certain circumstances, the altruistic aim of beneficence may be replaced by self-interest. Therefore, what

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appears to be a useful ambiguity in the law may in some cases conflict with the desires and values of the patient.

It would be naive to believe that lawmakers were unaware of those flaws in the law. Problems of definition are relatively easy to correct with further legislative and administrative rules which may, however, make the decision making process so rigid that it does not allow for unique situations.

On the contrary, the ambiguity apparent in the law is more fundamental than legislative intent or ineptitude. It reflects basic ambiguity in our society's moral position concerning autonomy and paternalism. This fact is evidenced in the section which invalidates a living will of a woman who is pregnant and nullifies the provisions of the document for the duration of the pregnancy. While the language of the Missouri law is very clear in this section of the law (a section which is certain to face constitutional challenges), it reflects the lack of a solid philosophical foundation. From a philosophical point of view, this exclusionary provision violates both the autonomy and beneficence principles underlying the philosophical purpose of the legislation.

This philosophical confusion is even more evident in the final section of the law which explicitly disavows any endorsement of mercy killing or

euthanasia. It does not permit affirmative acts or omissions to shorten or end life. Active euthanasia, a deliberate act of commission intended to terminate the life of a terminally ill patient, is prohibited in all states. However, acts of omission, sometimes referred to as passive euthanasia, are not only condoned but are enabled and protected by natural death act legislation such as the Missouri law. To be sure, philosophical differences and arguments continue concerning the active/passive distinction regarding euthanasia. Some argue that the distinction has

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no moral significance because the intention is the same. But the very existence of this law appears to endorse the dignified death of a terminally ill patient, and the decision can be based on a rational and compassionate foundation. From a logical and more encompassing philosophical perspective, the final paragraph of the statute contradicts both the rest of the law and its philosophical foundation.

As indicated at the outset of this

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analysis, the law of a society is a reflection of the moral values of that society. This fundamental confusion concerning moral values of matters of life and death not only constitutes a peril to decision making from a legal point of view, it also indicates a condition of moral confusion in our society. This moral confusion needs to be addressed in a systematic and rational manner that transcends the ad hoc procedures of legislative action.

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