Some Important Court Cases

I: Informed consent

Schloendorff v. Society of N.Y. Hospital (1914). S.C. Justice Benjamin Cardozo articulated the *need for consent* in this turn-of-the-century case, writing

> *"Every human being of adult years and sound mind has a right to determine what shall be done with his body, and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages."*

Salgo v. Leland Stanford University Hospital (1957). Need to *disclose information.*. Patient was paralyzed from a new diagnostic treatment and argued that the doctor had been negligent in not warning him that there was a risk of paralysis. ['Informed' is added to the notion of 'consent.']

Natanson v. Kline (1960). Another *disclosure* case: In a Kansas case a woman sued for damage in the form of radiation burns from cobalt radiation therapy following her masectomy. She brought a malpractice suit. The doctor conceded that she had consented, but had not been adequately informed of the risks.

Cobbs v. Grant (1972). Another California case. Cobbs had a duodenal ulcer. In the course of the operation, his spleen was nicked, and he had to have another operation. Then he developed a gastric ulcer. Cobbs felt he had not been sufficiently warned of possible risks of his initial operation. The court agreed and changed the standard of disclosure from physician-based ("what do doctors normally disclose") to patient-based ("what would a competent patient need to know to make a rational decision") (discussed in SAL, p 48)

Canterbury v. Spence (1972): The patient underwent a laminectomy for back pain. After the operation he fell out of bed and was paralyzed. He claimed to have been insufficiently warned of the dangers of the operation. Another very influential *informed consent* case.

II: Withdrawal of treatment by surrogate consent

In re Quinlan: In 1975 a 21 year old New Jersey woman, Karen Ann Quinlan, suffered severe brain damage after an alcohol/drug overdose. She was diagnosed as in a permanent vegetative state and was ventilator dependent. Her father asked the court to be appointed guardian so he could remove the ventilator. Her physicians resisted, appealing to the then current 'standard of care.'
The lower court refused the father's request but the state supreme court agreed. She was weaned from the ventilator but since her parents did not ask for medical nutrition and hydration to be withdrawn, she lived for another 9 years.

> "*The state's interest [in preserving life] weakens and the individual's right of privacy grows as the degree of bodily invasion increases and the prognosis dims.*

Ultimately there comes a point at which the individual's right overcomes the State's interest."

(Annas discusses in SAL, 388)

Barber v. Superior Court (1983): A severely brain-damaged patient with poor prognosis was removed from a ventilator and later from a nasogastric tube with the agreement of his family and physicians. Another caregiver alleged that the withdrawal of both treatments was part of a conspiracy to kill the patient to hide malpractice; a California appeals court ruled that the physicians had no duty to continue to provide life sustaining treatment in light of their prognosis and his surrogate's agreement that he would prefer not to be so sustained.

"…Since we view [the doctors'] conduct as that of omission rather than affirmative action, the resolution of this case turns on whether [they] had a duty to continue to provide life sustaining treatment. There is no criminal liability for failure to act unless there is a duty to act…The question posed by this modern technology is, once undertaken, at what point does it cease to perform its intended function and who should have the authority to decide that any further prolongation of the dying process is of no benefit to either the patient or his family?"

Cruzan v. Harmon (1987): In 1983 a 25 year old Missouri woman was injured in a car accident and suffered permanent brain damage. After 4 years her parents asked for artificial nutrition and hydration to be withdrawn, citing her statements to friends that if she were brain-injured she would not want to be kept alive. [=substituted judgment]
A lower court approved the request; the state appealed to the state supreme court, which overturned the lower court judge's opinion. The family appealed it to the US Supreme Court.
The Supreme Court ruled that yes, surrogates could withdraw life-supporting treatments; yes, artificial nutrition and hydration are on a par with other medical treatments in this respect; but that each state was allowed to set standards for what would count as evidence of the patient's prior wishes [and Missouri's standards didn't allow verbal testimony].
Missouri withdrew their objections to the withdrawal; Nancy Cruzan died 6 months after the supreme court decision and 13 days after the withdrawal of nutrition and hydration.

(Annas discusses in SAL, 388)

Important things about this case: she was diagnosed as in PVS (=permanent/persistent vegetative state, but not brain-dead); the treatment removed was not only ventilator support, but nutrition and hydration as well; states are allowed to set their own standards for what counts as evidence. Only two states, New York and Missouri, require a higher standard of evidence of the patient's preference than prior verbal statements.

III: Children and withdrawing treatment:

Children are typically treated as never-capable patients, for whom the standard of "best interests" applies, rather than patients for whom surrogates must establish prior preferences (the "substituted judgment" standard).

The *Linares* Case (1988): 8 month old Samuel Linares swallowed a balloon and showed no vital signs for 20 minutes. He was intubated and admitted to a pediatric intensive care unit with severe brain damage. After several months his parents intervened to ask that the ventilator be removed. The hospital attorney took the position that while Illinois law did clearly permit hospitals to withdraw life support from brain dead patients, there was no precedent for withdrawing a ventilator from a person with minimal brain function. After 8 months of hospital refusal the parents were advised to seek a court order authorizing the removal of the ventilator; but on the day they made an appointment with a lawyer the hospital announced that they were transferring Samuel to a long term care facility.

Mr. Linares entered the ICU with a pistol, and held caretakers at bay while he unplugged his child's respirator and held him while he died. He was charged with murder, but the judge in the criminal court dismissed the charge.

The *Messenger* Case (1995): Michael Messenger was born 15 weeks early, and weighed 27 ounces. Before he was delivered by caesarian section his parents requested that he not be sustained on life support if he were born alive. The neonatologist attending the C-section ordered the baby to be put on a ventilator and examined to determine his prognosis. His defense at the trial was that federal law and some state laws dating from the early '80s mandate that children born alive who are not imminently dying or permanently unconscious must be treated regardless of prognosis.

Michael's father, a dermatologist who worked at the hospital where Michael was delivered, went to the ICU and disconnected his ventilator several hours after his birth. He defended his actions by saying he did not want his son "to be an 'experiment,' sprouting tubes and barely alive." His attorney argued that the cause of death was the condition of Michael's lungs due to prematurity, not his father's actions in removing him from the ventilator.

His father was charged with manslaughter and acquitted.

IV: Treatment for incompetent patients

Superintendent of Belchertown State School v. Saikowitz (1977): Saikewicz was a 67 year old with an IQ of 10. He couldn't talk or communicate. He was diagnosed with AMM leukemia which was 100% fatal. Chemotherapy offered a 50% chance of partial remission. The court was asked to decide whether he should be treated or not.

The court articulated the doctrine of 'substitute judgment:' If the person cannot make a choice, a surrogate should be appointed to choose on h/h behalf, either judging as that person would judge, or judging so as to concord with that person's best interest. "Incompetent persons must have the same panoply of rights and choices as competent persons, because they have the same dignity and worth." A guardian was appointed by the court and a hearing, was held, in which the decision was made that he should not be treated. This decision was appealed to the state Supreme Court for definitive policy, and they affirmed it. The case remains controversial.

Rogers v. Okin (1977): This case began as a federal class action suit filed in 1975 by patients at Boston State Hospital challenging the hospital's restraint, seclusion and

involuntary treatment policies in Federal District Court. Seven plaintiffs were named. The law suit sought to enjoin the hospital from medicating patients against their will and from isolating them in seclusion cells. Greater Boston Legal Services represented the patients. The decision required that a court must hold a full evidentiary hearing, with counsel representing both sides and expert witness if needed, to make the decision whether an incompetent patient should be treated. This determination was to be made on the basis of "substituted judgment", that is, on an estimation of what the patient would have desired, were he competent

V: The Right of Providers to Refuse to Offer Treatments

In theory, clinicians have the right to refuse to render treatment that violates their personal or professional ethical standards; fidelity to one's professional ethics is a necessary criterion for professionalism. In practice, the US courts are predisposed in favor of life, and provider refusals are rare and controversial.

In cases involving refusal to treat, clinicians may not abandon their patients, but must make very reasonable effort to transfer the patient to the care of another clinician or facility. Some states (such as Virginia) include a conscience clause that explicitly addresses the issue of professional ethical standards in their Health Care Decisions Act. Until recently most such cases met the fate of Baby K.

In re Baby K (1994): Baby K was born in October 1992 in Fairfax Hospital with a large portion of her brain and skull missing. Her condition was diagnosed prenatally but her mother refused abortion and asked that the child be treated maximally. She was born by Caesarian section and intubated at birth. Three months later she was successfully weaned from the ventilator and transferred to a nursing home. The hospital filed a proceeding in federal court to determine the level of care they were obligated to render and requesting a guardian ad litem. After three re-admissions for respiratory distress a breathing tube was placed.

A federal judge ruled in July 1993 that the hospital has a duty to provide full medical care, including ventilator support, to Baby K under the Federal Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Emergency Medical Treatment and Active Labor Act. No weight was given to the claim that further prolongation of Baby K's dying process was futile and inhumane.

> *"The use of a mechanical ventilator to assist breathing is not 'futile' or 'inhumane' in relieving the acute symptoms of respiratory difficulty which is the emergency medical treatment that must be treated under EMTALA. To hold otherwise would allow hospital to deny emergency treatment to numerous classes of patients, such as accident victims who have terminal cancer or AIDS, on the grounds that they eventually will die anyway from these diseases and that emergency care for them would therefore be futile."*

The Fourth Circuit Court of Appeals in 1994 addressed the question of whether the Congress, in passing EMTALA, had provided an exception for anencephalic infants in respiratory distress. The Court found the language clear, and "left it to Congress" to draft language for federal legislation to clarify congressional intent that EMTALA's

requirement for stabilization be "consistent with reasonable medical standards." The US Supreme Court declined to review the case.

Baby K died at the hospital of cardiac arrest in April 1995 after being vigorously resuscitated. She was 2 1/2 years old, and it was her sixth admission to the hospital.

The court explicitly stated that since EMTALA was a federal law, it overrode the Virginia Health Care Decisions Act that allowed for refusals of conscience for individual providers.

The *Sun Hudson* Case: (2004) Ms. Hudson gave birth to a son with an unknown father (she is said to believe his father was the Sun) on September 25, 2004, at St. Luke's Episcopal Hospital in Houston, Texas, with thanatophoric dysplasia, a typically fatal form of congenital dwarfism. She was informed that the infant was most likely unable to survive, and should have his breathing tube removed pursuant to Chapter 166 of the Texas Health & Safety Code, the Advance Directives Act. [Under this act, a doctor's recommendations to withdraw medical treatment can be followed, after they have been reviewed by the hospital's ethics committee and after 10 days' notice is given to the patient or guardian.] Hudson was given 10 days from written notice to find a new facility to accommodate the infant, but was unable to do so. Texas Children's Hospital states that it attempted to contact 40 facilities without finding a willing one.

A judge ruled that the removal of the tube did not require Hudson's agreement.