



Health Care Ethics and End of Life: Legal Context

HEALTH CARE ETHICS AND END OF LIFE: LEGAL CONTEXT

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Interdisciplinary Master of Arts in Bioethics and
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33-credit hour program:

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Cruzan v. Director, Missouri Department of Health, U.S. Supreme Court (1990)

Facts: In 1983, 25 year-old Nancy Cruzan was rendered incompetent (persistent vegetative state) from severe injuries suffered in a car accident. Her parents sought a court order directing the withdrawal of their daughter's artificial nutrition and hydration when it became apparent that Nancy had virtually no chance of recovering cognitive capability.

Issue: Whether Nancy Cruzan has a right under the U.S. Constitution "which would require the hospital to withdraw life-sustaining treatment from her under these circumstances."

Holding: "[T]he Due Process Clause protects . . . an interest in refusing life-sustaining medical treatment." However, "a state may apply a clear and convincing evidence standard in proceedings where a guardian seeks to discontinue nutrition and hydration of a person diagnosed to be in a persistent vegetative state."

Reasoning:

“The Fourteenth Amendment provides that no State shall ‘deprive any person of life, liberty, or property, without due process of law.’ The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions.”

“[W]e assume that the United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition.”

Judicial decision-making most influenced by
“principalist approach”:

(a) Autonomy (libertarian)

(b) Nonmaleficence
 (“*primum non nocere*,” “first, do no harm”)

(c) Beneficence

(d) Justice
 [cost is not a defense; disregard allocation (what resource portion to a particular purpose) and rationing (which individuals receive available resources)]

Physician-Assisted Death: *Washington v. Glucksberg*, U.S. Supreme Court (1997)

Facts: Physicians and terminally ill patients challenged the Washington state statute prohibiting assisted suicide as a violation of constitutional due process.

Holding: Washington's prohibition against causing or aiding a suicide does not violate the the Due Process Clause of the Fourteenth Amendment. Assisted suicide is not a fundamental right protected by the Due Process Clause.

Justice O'Connor (separately concurring): "The parties and amici agree that . . . a patient who is suffering from a terminal illness and who is experiencing great pain has no legal barriers to obtaining medication, from qualified physicians, to alleviate that suffering, even to the point of unconsciousness and hastening death." [terminal sedation?]

Physician-Assisted Death: *Vacco v. Quill*, U.S. Supreme Court (1997)

Facts: Physicians and terminally ill patients challenged the New York statute prohibiting assisted suicide as a violation of equal protection. (Terminally ill patient may hasten death through removal of life support, but similarly situated patient not on life-support may not hasten death by self-administering prescribed drugs.)

Holding: New York's prohibition on assisting suicide does not violate the Equal Protection Clause of the Fourteenth Amendment (no State shall "deny to any person within its jurisdiction the equal protection of the laws").

Note 11: "Just as a State may prohibit assisting suicide while permitting patients to refuse unwanted lifesaving treatment, it may permit palliative care related to that refusal, which may have the foreseen but unintended 'double effect' of hastening the patient's death."

Patient Self-Determination Act (1990)*

- designed to increase the role that advance directives (living wills, durable powers of attorney) play in medical care decision making.
- applies to hospitals, skilled nursing facilities, home health agencies, hospice programs, and HMOs that receive Medicaid or Medicare funding.

* 42 U.S.C.A. sections 1395(a)(1)(Q), 1395cc(f), 1395mm(c)(8), 1396a(a)(57) & (58), 1396a(w).

Patient Self-Determination Act (1990)

Requires providers covered by the Act to provide each patient with written information concerning:

- (i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning . . . medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives . . . And
- (ii) the written policies of the provider or organization respecting the implementation of such rights.*

*42 U.S.C.A. section 1395cc(a)(1)(f)(1)(A).

Patient Self-Determination Act (1990)

Providers covered by the Act also must:

- maintain written policies and follow procedures with respect to advance directives;
- document in each patient's record whether that patient has executed an advance directive;
- comply with laws of the state regarding advance directives;
- provide staff and community education concerning advance directives (living wills and durable powers of attorney).

“Death with Dignity” Initiatives

Oregon Death with Dignity Act (1994)

(terminally-ill adult Oregonians allowed to obtain and use prescriptions from physicians for self-administered, lethal medications)

Washington Death with Dignity Act (2008)

Netherlands (2001)

Belgium

Switzerland

Constitutional Court of Columbia

Rights of the Terminally Ill Act (1995), Australia’s Northern Territory

Supplemental References

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