Partnership for Caring

Women and End-of-Life Decisions

In the landmark right-to-die case, Cruzan v. Director, Missouri Department of Health, the U.S. Supreme Court recognized that competent adults have the constitutional right to refuse medical treatment, even if that treatment is necessary to sustain life. This right can be preserved through advance directives such as living wills and durable powers of attorney for health care in the event the individual loses the ability to make decisions for herself.

But the right to refuse medical treatment at the end of life is not the same for women as it is for men. Advance directive laws in individual states often explicitly limit the applicability of living wills or durable powers of attorney for health care during the course of a woman's pregnancy. Even when the law is the same for men and women, there is evidence to suggest that the courts apply that law differently for the two sexes.

Pregnancy Exclusions

"Pregnancy exclusions" - the phrase used to describe the restrictive provisions of state law that forbid a woman's advance directive from being honored while she is pregnant - illustrate this imbalance between the rights of women and men in end-of-life decision making.

In Roe v. Wade and more recently in Planned Parenthood of Southeastern Pennsylvania v. Casey, the U.S. Supreme Court ruled that a woman's decision to end her pregnancy is a constitutionally protected interest.

Combined with the Cruzan decision, these cases clearly suggest that, at least prior to viability of the fetus, no state may force a pregnant woman to receive unwanted medical treatment.

State laws do not follow suit. Of the 47 states and the District of Columbia that have living will statutes:

- thirty-two states explicitly forbid the withdrawal or withholding of life support under a woman's living will if she is pregnant;
- eleven states and the District of Columbia make no mention of pregnancy in their living will statute, implicitly allowing a woman to refuse life support during pregnancy;
- only four states explicitly permit a woman to refuse life support if she is pregnant.

Of the 49 states and the District of Columbia that have durable power of attorney for health care statutes permitting health care agents to make decisions regarding life support:

- sixteen states explicitly forbid a health care agent from ordering the withholding or withdrawal of life support on behalf or pregnant patients;
- Twenty-eight states and the District of Columbia are silent on the issue of whether an

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agent may order the withholding or withdrawal of treatment from a pregnant patient, implicitly allowing the agent to refuse life support on behalf of a woman during her pregnancy;

- only five states permit the woman to choose whether her agent can withhold or withdraw life support in the event she is pregnant.

End-Of-Life Court Cases

Women may also be subject to unequal treatment by the courts when end-of-life medical treatment is at issue. Two researchers (Mile and August, 1990) studied the outcomes of all end-of-life cases decided by state appellate courts involving patients without advance directives.

This study found:

- out of eight cases involving men, the court found sufficient evidence of the patient's treatment wishes from prior statements in six cases;
- out of fourteen cases involving women, the court found sufficient evidence of the patient's treatment wishes from prior statements in only two cases;
- many courts characterized past statements made by male patients as "rational." In contrast, the female patients' statements were characterized as "unreflective," "emotional," or "immature;"
- Some of the courts never even mentioned the women's prior statements.

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