

The eReview provides analysis on public policy relating to Canadian families and marriage. Below please find a commentary clarifying the recent and highly publicized case of Mr. Samuel Golubchuk in a Manitoba hospital, whose doctors wanted to remove care against the family's wishes.



The case of Samuel Golubchuk

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In October 2007, Mr. Samuel Golubchuk, age 84, was admitted to Winnipeg's Grace Hospital with pneumonia. The infection was treated and brought under control, but the ordeal left him weaker than before. His recovery was slow, especially given that in 2003 he fell down some stairs, and sustained physical and mental injuries [1]. Samuel Golubchuk's hospital stay became a controversial and public battle for his life. One month after he arrived, his family received some shocking news. His doctors decided he was unlikely to fully recover; care (a feeding tube and respirator) would therefore be removed. The family disagreed, saying if doctors deprived Mr. Golubchuk of food and breathing aid he would die a very slow and painful death.

Not only this, they asked why doctors were the sole decision-makers on what they said was a quality of life decision, something they were better equipped to judge. They cited their orthodox Jewish faith; hastening his death would constitute a gross violation and, as the family's lawyer put it, "an assault." [2]

Finally, Samuel Golubchuk showed brain activity – even to the point of medical staff seeing him awake. [3] [4]

QUESTIONS

Still, the case highlights several questions debated in the media, questions Canadians should foresee becoming more and more prevalent: Who makes medical decisions? What constitutes a sufficient quality of life? And can doctors override a family's wishes, whether for life or death?

Adding fuel to the fire, on January 30, 2008, the College of Physicians and Surgeons of Manitoba (CPSM) released new guidelines for doctors, which highlight that next-of-kin can make no input into the care of their family member. "No one, including the patient's next of kin, has the legal authority to consent to or refuse medical treatment, including life-sustaining treatment, on behalf of an adult patient, unless that person has been granted that authority by the patient in a valid health care proxy or by Court appointment or pursuant to legislation," reads the statement. The next point, related to the first: "The Manitoba Courts have recognized that physicians have the authority to make medical decisions to withhold or withdraw life-sustaining treatment from a patient without the consent of the patient or the patient's family." [5]

Jennifer Miller, Executive Director of Bioethics International, says while it is possible in certain circumstances that doctors, by virtue of being emotionally removed from a case and their clinical knowledge, are better equipped to make end-of-life care decisions; this question of "who-knows-best" misses the point.

The real issue behind the Grace Hospital and CPSM decisions is what she calls "utilitarian and socio-biological" outlooks regarding human life. These outlooks reduce people to their functions, for example equating a human solely with their brain function or their function in society. This opposes the view that all people, regardless of age, health, gender and race, possess equal, intrinsic value. [6]

This brings in the concept of health care rationing; which proved to be an integral question in Mr. Golubchuk's case. Arthur Schafer, Director of the Centre for Professional and Applied Ethics at the University of Manitoba writes, "[t]here is a scarcity of intensive care beds....It's unethical to waste scarce life-saving resources." [7]

McGill professor of Law and Medicine Margaret Somerville says that we need to distinguish between futile treatment and medically futile treatment. Mr. Golubchuk's doctors contend that the treatment in question is futile, but it is not, in fact, medically futile. Treatment is only medically futile if it will have no effect, whatsoever. That is not true for Mr. Golubchuk's feeding tube and ventilator; they are keeping him alive. Dr. Somerville claims that in cases like these, where the treatment is not medically futile but involve taking into account broadly-based values that go well beyond medical decision making, the doctors alone do not have the right to decide when to withdraw treatment. Moreover, she says a major issue in this case seems to be whether economic concerns can provide an ethical and legal justification for withdrawing treatment, citing research that shows, on average, a person uses a disproportionately high percentage of their lifetime health care expenses during the last one or two months of life. [8]

POLICY IMPLICATIONS

The economics of a failing health care system should not inform health care decisions. Neither should doctors have the sole input into a patient's life.

Finally, Canadians need to decide, in economic boom or bust, whether the most vulnerable members of society—the elderly and the sick deserve care and protection.

For Samuel Golubchuk, the case has a happy end. At two p.m. on February 13, Justice Perry Schulman of Manitoba's Court of Queen's Bench announced Grace Hospital must continue to provide care. Yet his case should concern Canadians: The question of eldercare will affect every one of us.

ENDNOTES

[1] Skerrit, Jen. (2008, January 31). Physicians given the right to kill, lawyer says. *Winnipeg Free Press*. Retrieved online February 25 from <http://www.winnipegfreepress.com/subscriber/local/story/4117611p-4712654c.html>.

[2] CTV.ca News Staff. (2007, December 17). Family fights to keep 84-year-old on life support. *CTV.ca*. Retrieved online February 25 from http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20071217/Golubchuk_alive_071217.

[3] Skerrit, Jen. Physicians given the right to kill.

[4] "Legislation provides that the death of a person takes place at the time at which irreversible cessation of all that person's brain function occurs," reads their guideline statement. College of Physicians and Surgeons of Manitoba. (2008, January 30). *Statement: Withholding and Withdrawing Life-Sustaining Treatment*. (Report No. 1602) <http://www.cpsm.mb.ca/statements/1602.pdf>. p. 15-S2.

[5] "Life-sustaining" refers to care that prolongs life without correcting the underlying medical condition: "Any treatment that is undertaken for the purpose of prolonging the patient's life and that is not intended to reverse the underlying medical condition," reads the Manitoba College statement. (p. 15-S3)

[6] Miller, Jennifer, personal communication, February 13, 2008.

[7] Schafer, Arthur. (2008, February 8). Deciding when life ends. *Ottawa Citizen*. Retrieved online February 24 from <http://www.canada.com/ottawacitizen/news/story.html?id=6af86b76-32ba-4c41-b11c-22df774d74d4&p=2>.

[8] Somerville, Margaret, personal communication, February 13, 2008; Fries, James. (1989). Compression of Morbidity: Near or Far?" *Milbank Quarterly*, 67:2, 208-232.

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