

Introduction

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THOUGH SOME GERONTOLOGISTS PREDICT THAT aging will eventually be free of serious morbidity and decline until the very end of life, recent experience has shown just the opposite. Increases in the number of the aged have swelled the population afflicted with Alzheimer's disease and other senile dementias, while development of medical technique and practice have prolonged the act of dying. The result has been a loss of control by the individual over the most important decisions leading to death. Management of life-and-death matters is given over to teams of medical professionals. When control over the process is contested, the decision may be made not at the bedside but in the courtroom, argued before a judge by attorneys representing the family, the physicians, and the hospital. The voice of the patient, meanwhile, can barely be heard.

This special issue of the *Milbank Quarterly* is devoted to medical decision making for the demented and the dying: what role the individual can and should have; who can and should make decisions on behalf of the patient; what latitude the law will permit in making a choice between treatment and nontreatment; and what principles should guide the choice from among available alternatives. The articles are based on work commissioned by the Office of Technology Assessment, United States Congress, for use in its reports on decisions on life-sustaining care and on the senile dementias. Though markedly different

in approach, the four articles provide a broad perspective on the ethical and legal issues that arise when medical decisions must be made on behalf of a patient in decline.

Ronald Dworkin's article, excerpted from a larger work in progress on philosophical issues in senile dementia, is concerned with the role that the patient's own preferences should have in the decision process. His questions are philosophical in character but practical in importance: Does the patient who becomes demented remain the same person? Ought the earlier self's preferences predominate even when they conflict with those of the demented self? What degree of respect should be paid to the demented self's autonomy, and on what does that respect depend? These questions, which apply also to many dying patients who have not suffered a long period of dementia, must be thoughtfully addressed in formulating legal and institutional policies regarding decision making for those with failing mental powers.

The contribution of Buchanan and Brock, also taken from a book in progress, provides substantive discussion of the key issues in surrogate decision making: For whom must a surrogate be named? Who can serve as a surrogate? On what basis is the surrogate to come to a decision? Though these issues are usually legal ones, these authors seek to provide a theory, largely moral in nature, from which enlightened and rational legal and institutional rules can be inferred.

The final two articles focus squarely on the medico-legal decision processes. Annas and Glantz give an account of the fast-developing case law on treatment decisions for the dying and demented, and discuss new and proposed legislation that would enhance the patient's ability to assert control over treatment. Kapp and Lo, in the final article, study the knotted relation of medicine and the law, and of doctors and lawyers, in dealing with these clinical decisions. They attempt to determine why the law is misperceived by clinicians, and how the law's contribution might be made more effective.

Until the promised squared-off morbidity curve arrives, medical decision making for the dying and demented will be a source of difficult and emotionally charged ethical, social, and legal problems. The articles included here suggest, however, that unlike many problems in medical ethics and law, these problems are not, in principle, insoluble. Though many different answers could be given to the moral, philosophical, and legal questions involved, some of these are clearly better than others, and often the appearance of uncertainty and confusion

is greater than the reality. A careful reading of these articles reveals that a reasoned and coherent set of principles and policies is achievable. This supplement, a collaboration between physicians, lawyers, and philosophers, provides resources for the development of orderly and fair procedures for making decisions for patients in decline.