Reviewer’s report

Title: Ethical Failings of CPSO Policy and the Health Care Consent Act: Case Review

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Reviewer: Robert Swidler

Reviewer’s report:

Ethical Failings of CPSO Policy and the Health Care Consent Act: Case Review, is well-reasoned, well-written and takes a position that falls well within a major current of medical ethics. It warrants publication.

Having said that, the article does not break any new ground or advance any novel ideas. Many medical ethicists - from at least Daniel Callahan at the Hastings Center in the 1980's and since - have criticized the elevation of autonomy over all other ethical values in end-of-life decision-making. Physicians and others continuously have asked for an override based on their view of what is "medically appropriate" or "futile."

I completely agree with their argument for an override. But there are weaknesses in that argument, and there are counterarguments, that this article does not recognize or address. The weaknesses, and this article exhibits them, is allowing physician override based on vague or subjective standards like "medically-appropriate care" (p5, line 62), and equating "futility" with "irreversibility." Irreversibility says nothing about the seriousness or stage of an illness (psoriasis is irreversible) but even after limiting the term to the most serious cases, it would necessitate the discontinuance of treatment from patients with PVS or even terminal illnesses. The article also does not grapple with the real problem of prognostication, and variability in physician judgment of medical appropriateness.

Again I agree with the authors' position, and I believe these critiques can be addressed. I did not see them addressed in this article.

I'd make one other point about the authors' critique of the Health Care Consent Act. They fault the HCCA for requiring surrogate decision-makers to consent or withhold consent based on patient wishes. They believe the surrogate decision-makers should not be bound by that standard. The article should recognize that it is logical to require surrogate decision-makers to give voice to the patient's wishes, while still establishing limits on what either the patient or the SDM could demand. Consent to treatment is just permission - it is not an obligation to provide medically ineffective treatment. But the SDM should not be the enforcer of limits - that should be elsewhere.

In sum, I'd restate that this was an excellent and useful article and should be published. I thought it would be useful to note areas it might have considered.

Are the methods appropriate and well described?
If not, please specify what is required in your comments to the authors.

Yes

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Yes

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