

The mantle of legal protection

Abstract

There is an important participation of biolaw in the interdisciplinary teamwork of palliative care. The aim is to protect autonomy, when individuals cannot do it by themselves. What matters is the manifestation of refusal to accept procedures that do not offer a cure, and aim only at postponing the death that will result from the disease rather than from the lack of any specific procedure.

Keywords: palliative care, law, end-of-life, Biolaw, autonomy

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Perspective

It is more common for Law to be used to settle existing conflicts than for the prevention of rights violations. When it comes to palliative care this course of action must be different. Everyone involved should prevent predictable situations, which will avoid a series of future problems such as disrespect for autonomy. This is the proposed dialogue between Biolaw and Health.^{1,2}

Through the protective mantle of Law-from legal pallium-the autonomy of the individual can be preserved when lost due to incurable disease leading to the termination of life. The mantle protects the body and also the manifestation of the will of individuals so that they have their autonomy respected when unable to manifest their will. We all may leave our prior wishes manifested through the living will, in writing or by video, and appoint a person to enforce those wishes or make decisions in situations not yet imagined.

In Brazil, there is no law for advance directives of will that includes the living will and the appointment of a person to enforce the will. When medical diagnosis indicates that the person will die soon, there are the analysis of the clinical picture and the absence of response of the patient to procedures performed, based on medical protocols. Some symptoms remain unchanged and organic imbalance grows to the point that recognizing the irreversibility of the disease is inevitable.³⁻⁵

Palliative care is not expected to come in only at the last minute or at imminent death. Scholars of the subject know that it must be implemented whenever incurable disease occurs. And these are numerous-just remember hypertension or diabetes. Ending or minimizing pain, making individuals comfortable and at peace with themselves and able to communicate with family and friends or pets are acts of care. Just like a spiritual, not necessarily religious, conversation that shall bring transcendental comforting. Family also needs protection, because the illness of their loved one brings a lot of suffering, and their experience is unique, for this there is a multiprofessional team.⁶

To prevent is to make the sick person's wishes clear as to desired or undesired procedures, and that can be done through the living will. What seems difficult is the choice of what procedures the individual should accept or refuse when he/she does not have knowledge in the health area. When asking a lay person if, in a situation of terminality in case of an incurable disease, he/she wishes to be intubated, this evaluation will be difficult without hearing a medical professional who has studied the subject and was trained for this kind of situation. The same will occur for other procedures such as hemodialysis, artificial respiration or even artificial nutrition. It is very difficult to assess what will be useful and necessary for that moment of health weakness.

Here is the key to this matter. It is unnecessary for the individual to indicate specifically which procedure he/she accepts or not in case of an incurable disease and the end of life. In fact, what matters is the manifestation of refusal to accept procedures that do not offer a cure, and aim only at postponing the death that will result from the disease rather than from the lack of any specific procedure. When one stops supplying a patient with artificial respiration, this action cannot be characterized as a crime of homicide, but the absolute meaninglessness of the use of that procedure, since the medical diagnosis points at its uselessness and futility. That does not mean that the individual will die in pain with shortness of breath, because palliative medicine professionals know how to make that person comfortable even without artificial respiration.

Individuals who wish to have their prior wishes manifested should make it clear that they do not want useless or futile procedures, that only treatments with a possibility of cure should be carried out and that therapeutic obstinacy should be avoided. A simple document, signed by the person. This document may be notarized but, in Brazil, this is not required by law. Most importantly, other people should know that such document exists and submit it when necessary. Some practitioners believe that notarization brings formality on the document and makes it mandatory, despite the fact that is not required by law. The individual's manifestation is enough to make compliance mandatory because the Brazilian Constitution guarantees the fundamental right to freedom, on the same level as the right to life.

The Elderly Rights Statute and the Disability Rights Statute are laws that guarantee the right to opt for the most favorable health treatment and to characterize as violence any act that causes unnecessary physical or psychological harm or pain, and provide for the compulsory notification of said violence to the authorities.

Brazil has signed an inter-American convention on human rights of the elderly, with a commitment to respect the autonomy of the elderly in decisions about their health and to implement palliative care to improve their quality of life. The law requires prior, free and informed consent for the conduct of treatment, procedure, hospitalization and scientific research. Terminally ill individuals are obstructed from their full and effective participation in society on equal terms with others and can be considered a person with a disability enjoying the existing legal protection. Individuals with disabilities under guardianship should have their participation in obtaining consent ensured to the greatest extent possible. Lawmakers have chosen to give maximum participation in health decision-making, even to people with intellectual or mental disabilities, in line with Martha Nussbaum's theory of capabilities, which proposes maximum utilization of the functionalities of the individual.

To palliate, protect and offer care before the end. Verbs to be practiced by the health team and Law professionals.

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Conflicts of interest

There is no conflicts of interest.

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