

# Orthotanasia and the right to die with dignity in Brazil

## Mini review

In the last decades a rapid advance of Medicine and Biotechnology was witnessed, even questioning the possibility of human immortality. In this sense, with the modernization and discovery of new techniques, Man has passed discreetly from being, to thing.

Speaking of death these days terrifies everyone, as if expecting life to be eternal from the biological point of view. The culture of the healed body, of the health generation, reminds us of the god's own body, leading us to the category of supermen and super-women, the proof of any disease. They forget that one day they will become old, that their organs will eventually cease to function, and that death is inevitable.

However, this is not the reality that is found in ICUs (Intensive Care Unit) of hospitals. People with end-stage disease, with no chance of cure, agonize in hospital beds and suffer too much because they only survive on devices that prolong death without taking into account the dignity of the patient.

The Constitution of the Republic of 1988 from Brazil<sup>1</sup> reveals to us that the dignity of the human person is one of the foundations of our State. In this way, to the extent that these patients have no more chance of cure, and to avoid treatments that cause them more pain and suffering that only prolong death, they should be given the right to die with dignity.

And this right is concretized by the practice of orthotanasia, which means the right death, in its right time, not subjecting the terminal patient to inhuman and degrading treatments, which only aim to prolong his death, without any chance of cure, provided that respected his will.

Pursuant to article 3 of Law No. 9,434 of February 4, 1997, the Presumed Organ Donation Law, or better known as the Transplantation Law, "is considered to be the end of human life to encephalic death."

According to Resolution n. 1480/97 of the Federal Council of Medicine,<sup>2</sup> the establishment of the concept of death was established by doctors, where it is stated in this resolution that brain death, which is the criterion adopted for organ transplants, is characterized by the apperceptive coma with absence supra-spinal motor activity and apnea.

Thus, under the legal prism, death only occurs mainly after cessation of brain activity. Before this moment the patient or terminal patient is in the process of dying, which is why dignity must be assured until the end of his life.

It is understood, therefore, that if during the whole development of the person the dignity was guaranteed, it must be taken into account that at the end of life, it must also be observed, under penalty of violation of this guarantee.

Dignity, based on article 1, item III, of the Constitution of the Republic of 1988,<sup>1</sup> establishes that Brazil is a Democratic State of Law that has as one of its foundations the dignity of the human person.

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And these final moments of life include the process of dying, where the autonomy of the one who seeks to have a dignified life, the right to die worthily, must be assured.

In this sense, we can see the relation between the right to life and the critique of the prolongation of this same life in terminal patients.

The right to life is neither absolute nor a duty, as the individual's life duty does not exist in the constitutional text, and even the Brazilian Penal Code does not criminalize the attempted suicide.

In this understanding, Roxana Borges<sup>3</sup> affirms that the right (not the duty) to life is assured, but the patient is not allowed to undergo treatment, although there is a state duty that the best medical treatments are at your disposal.

As soon as the violation of fundamental rights and guarantees occurs, there is a violation of the right to life. Therefore, once the dignity of the patient, his autonomy, when subjected to treatments considered useless, that become inhuman and degrading to him, can no longer be said that there is respect for life, since life must have quality, and quality of life infers in physical, psychological, social and economic well-being.

It is understood that once there is no prospect of healing, the patient should be given the right to die with dignity, since the process of dying is part of the life of the patient, who has the right to life, dignified.

It should be noted that the concept of a terminal patient or patient, despite not having a consensus in the medical field, "is the chronic patient for whom medicine offers no real chance of cure", according to Iberê Anselmo Garcia<sup>4</sup>

Terminality, according to Raquel Sztajn<sup>5</sup> is a state of fact, a state of nature, in which the supervenience of death, whether due to aggravation of the disease or another cause (trauma or accident) is inevitable, occurring in a relatively short period of time.

What has been shown nowadays is the incessant search of medical devices for the purpose of conquering death, making the terminal patient often an instrument of medical studies, regardless of his will and dignity. Thus, it must be ensured that freedom, as the fundamental guarantee of the individual, and the institution of the Democratic State of Right, must be guaranteed to the terminally ill patient.

According to the philosopher Marcel Conche<sup>6</sup> “without the freedom to leave this life, we would live without the freedom to live because, not having the freedom to die, we would not be in life by choice but imprisoned in it as a prison”.

In this view, Ronald Dworkin<sup>7</sup> states that “to lead a person to die in a way that others approve of, but which represents a terrible contradiction of his own life, is a devastating and odious form of tyranny.”

The freedom of the patient should take into account informed consent,<sup>1</sup> for refusing or not treatment, in order to verify the best decision to be made by him; it is a doctor’s duty and a patient’s right.

Failure to comply with informed consent, the health professional may even be involved in crime, such as unlawful embarrassment, private jail and personal injury, typified in articles 146, 148 and 129, respectively, of the Brazilian Penal Code.

In this understanding, argues Roxana Borges,<sup>3</sup>

*Failure to comply with this will on the part of doctors may characterize private jail, illegal embarrassment and even personal injury, as the case may be. The patient has the right, after having received information from the physician and clarifying the perspectives of the therapy, deciding whether to undergo the treatment or, if it has already started, whether to continue with it.*<sup>3</sup>

In addition to this order of ideas, one can also add the rule provided for in Article 15 of the Civil Code of 2002 which provides that “no one may be constrained to submit, at risk of life, medical treatment or surgical intervention”, because of the principle of freedom to the body itself.

However, there will be cases in which the patient will not be able to express his will, either due to the effects of medication or the disease itself, or even the state of unconsciousness, coma, or vegetative. Such

<sup>1</sup>Informed consent is a right of the patient, right to information, constitutional guarantee, provided for in article 5, item XIV of the Brazil Constitution, and ch. IV, art. 22 of the Code of Medical Ethics. According to Roxana Borges, the patient has the right, after having received information from the doctor and clarifying the perspectives of the therapy, deciding whether to undergo the treatment or, having already started, whether to continue with it. This information must be prior, complete and in accessible language, ie in terms that are understandable to the patient, the treatment, the therapy used, the expected results, the risk and the suffering to which the patient can be subjected. The author further clarifies that, for the physician's safety, consent must be written.<sup>3</sup>

situations must be rigorously analyzed, where it is up to the family to decide whether or not to carry out treatments directed at the terminally ill patient, if they have not left an advance directive to achieve their will. And if he opts for a worthy death, the family, as guardian of the patient’s interests, will have this right.

This duty is contained in sections II, VI and XXII of the new Code of Medical Ethics, which regulates medical activity, which came into effect on April 13, 2010.

It is concluded that orthotanasia, which aims at death at the right time, is the procedure by which the physician suspends the treatment, or only performs palliative therapies, to avoid further pain and suffering to the terminally ill patient, who no longer has a chance of cure; provided that this is the will of the patient, or his legal representative, thus assuring him the right to die with dignity, as a coextension of the dignity of the human person.

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## Conflicts of interest

The authors declare there is no conflict of interest.

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