

Surrogates: speaking for patients helps doctors



It is by now generally established that people in possession of their wits have the right to refuse any treatment offered to them by their medical attendants. But what about patients who cannot make rational decisions because they are unconscious or mentally incompetent or likely to

become so? Here the use of living wills and surrogate decisions recently legitimised by new laws may help doctors navigate across a perilous quagmire where ethicists and contingency lawyers lurk at every turn.

Since last December a new federal law requires hospitals and nursing homes to inform patients in writing of their rights to make health care decisions. They must document in the medical record that the patient was asked if he or she had made a living will or issued advance directives, they must also have established written policies on these issues, and they must inform and educate the staff about these policies.

While imposing an extra load of paper-

work these provisions should allow the public airing of issues often left unspoken. It is expected that the admission clerks will do the preliminary work. The doctor, starting off by knowing where the patient stands by merely looking at the bedside chart, should then feel more comfortable in opening a dialogue, discussing options, answering questions and offering counselling.

For patients whose wishes were not spelt out in advance a new law in Illinois gives doctors the power to appoint surrogates to make decisions on their patients' behalf. This applies only to terminal illnesses where death is imminent to permanent unconsciousness, or to an irreversible state for which further treatment provides only minimal benefit. The doctor must first establish the presence of one of these conditions and have these findings confirmed by a second doctor. The law does not apply to incurable dementia or Alzheimer's disease.

To prevent abuse and as a safeguard in case the patient does indeed understand what is being done, the attending doctor must also ask patients if they agree to having a surrogate represent them. The doctor may then appoint one according to a spelled out hierarchy: guardian, spouse, children, parents, siblings, grandchildren, or a close friend. The surrogate may then act without a court order and can stop treatments such as ventilation, surgery, dialysis, blood transfusion, admini-

stration of drugs, and artificial feeding or hydration. In making decisions the doctor must henceforth regard the surrogate as though he or she were the patient. The law protects the doctor and the surrogate for decisions made in good faith though not against "negligence" in carrying out their duties.

These two laws should help doctors in an area clouded by much uncertainty. But while confirming the primacy of the patient's wishes, they offer little help when relatives insist that futile treatments be continued. Although strictly speaking doctors cannot be forced to prescribe such treatments against their best judgment (such as indefinite ventilation or dialysis for a permanently comatose patient), fears of prosecution or malpractice suits generally result in such procedures being continued, often at a cost of millions of dollars.

Faced with escalating costs, hospitals have lately resorted to the courts, asking for permission to discontinue certain treatments such as ventilators. But the results have been mixed, and additional legislation may be needed to clarify these murky issues. As an ethicist put it recently: "the idea that patients have a right to demand any treatment in a system where 35 million people cannot even get a prescription is preposterous"—GEORGE DUNEA, attending physician Cook County Hospital, Chicago, USA.