

Case Commentary

Case History

Joan was admitted to hospital for a bowel resection because of a malignancy. She is sixty five years old and has moderate emphysema. A physiotherapist saw Joan on the ward to complete a respiratory assessment, and to discuss the need for ongoing respiratory physiotherapy during her hospital stay. The purpose of the physiotherapy treatment was to educate Joan about the effects of the general anaesthetic on her respiratory problem, and the physiotherapy techniques that she could use to help avoid potential respiratory complications.

Joan told the physiotherapist that she did not want to have physiotherapy as she has managed with her emphysema for years. She did not want the physiotherapist to explain about the need for this treatment and told the physiotherapist that she neither needs nor wants physiotherapy treatment. The physiotherapist felt unhappy about this situation because she felt that the

patient would not be adequately prepared for surgery from a physiotherapy point of view. The physiotherapist attempted to discuss this with Joan later that morning but with no success. The physiotherapist then informed the surgeon of the problems. The surgeon was hopeful that respiratory complications would not arise and planned to continue with the scheduled operation.

The operation did not go well and Joan developed a respiratory complication (pneumothorax) that required a chest drainage tube. She arrived at ICU on a ventilator and was unable to communicate. Twenty four hours later Joan developed signs of pneumonia and physiotherapy treatment was requested for every two to four hours. The physiotherapist began the treatment with the knowledge that this was against the pre-operative wishes of Joan.

Was the physiotherapist's behaviour justified?

Commentary One

Rosemary Jarney

Member, New Zealand Society of Physiotherapists Incorporated

The physiotherapist initially attempted to see the patient (Joan) to assist in her preparation for surgery, especially as Joan has emphysema. This assistance was refused and Joan's right to do so was respected. The physiotherapist quite correctly informed the surgeon of the situation in order that the surgeon was aware of the potential problems that may arise from this. The outcome of both the preoperative visit and the subsequent discussion with the surgeon should be written up in Joan's medical record. No information was given, in the case history, as to the reasons why Joan refused physiotherapy treatment nor how much information Joan received about her surgery and its outcomes. The physiotherapist quite correctly respected the patient's right to refuse treatment.

The right of a patient to refuse or withdraw from treatment is laid down in the Code of Rights for Consumers of Health and Disability Services that states that 'Every consumer has the right to receive services and exercise rights free from coercion, harassment and discrimination.' The Physiotherapy Code of Ethics - guidelines also states that 'Patients have the right to withdraw from treatment at any stage.'

The post operative outcome outlined in the case history is not the one that was likely to have been predicted for Joan - ventilated in ICU with a chest drain and showing early signs of pneumonia. Joan is now in a potentially life threatening situation and although Joan may not now be able to communicate verbally due to the artificial ventilation, whether awake or sedated everything that is happening to her should be explained. Physiotherapy treatment has been requested 2-4 hourly for her pneumonia not for her emphysema. Provided that the physiotherapist adequately assesses Joan prior to commencing each treatment and that each treatment is only given if clinically necessary then the therapist can be justified in giving that treatment. The assessment, the treatment plan and treatment outcome should all be clearly documented and discussed with the appropriate staff.

The Physiotherapy Code of Ethical Principles states that 'Physiotherapists act in the best interests of their patients.' It also must be noted that both the Physiotherapy Code of Ethics - guidelines and the Code of Rights for Consumers of Health and Disability Services state that the consumer/patient has the right to make an informed choice and to be provided with sufficient information in a manner that they can understand in order to make that choice. In consenting for surgery Joan made a choice and at that point allowed the surgeon to begin to make some decisions for her. Again the Code of

Rights for Consumers of Health and Disability Services states 'Every consumer has a right to have services provided in a manner consistent with that consumer's needs.'

If it is paramount at all times that treatment is given only when it is clinically necessary then, until Joan is capable of participating in the decision making process. The physiotherapist can be justified in giving treatment as she is providing a service that is consistent with Joan's needs.

Commentary Two

Sandy Elkin, Lynley Anderson

Physiotherapists and students of Bioethics

A physiotherapist working in a hospital setting has several areas of responsibility. First, to the patient receiving treatment, second, to the referring physician and third, to the physiotherapy profession.

The physiotherapist's duty to the patient is to explain the purpose of the treatment, to educate the patient about her options including the risks, side effects and benefits of treatment, to honestly answer any questions she may have, and to gain her informed consent before proceeding. The physiotherapist would need to satisfy herself that she had made reasonable efforts to do this and in this case the physiotherapist made more than one attempt to speak to the patient. One could argue that informed consent (or

in this case refusal) has not been given as the patient did not allow the physiotherapist to give her the relevant information. Joan has made a decision not to be informed.

In order to respect the patients autonomy, the physiotherapist cannot proceed with treatment against the patient's wishes. This accords with the New Zealand Society Code of Ethics (3.6) which states that patients have the right to withdraw from or refuse treatment at any stage. This is also in agreement with the Code of Health and Disability Services Consumers Rights which states in Right 7.7 that every consumer has the right to refuse services and withdraw consent for services.

The second responsibility of the physiotherapist is to the referring physician. In this case the expectation is that Joan will be adequately prepared for surgery from a physiotherapy perspective. This involves a respiratory assessment, education in post-operative respiratory management, and further education about techniques that may be employed to prevent respiratory and cardiovascular complications. Although the physiotherapist was unable to meet this responsibility she did fulfil her obligation to the physician by informing him of the difficulty she had encountered.

By respecting the patient's autonomous choice to refuse treatment she has fulfilled an obligation to her professional code. The professional code also states (2.8) that the physiotherapist should keep the patient's referring health professional informed of the patient's progress and any concerns the physiotherapist may have. Therefore by informing the physician the physiotherapist has also met this requirement.

Unfortunately the operation does not go as smoothly as was expected by all concerned. Consequently the scenario has changed. Does this mean that the physiotherapist is bound by the patient's pre-operative refusal of physiotherapy treatment? The treatment that Joan refused prior to her surgery could be said to be simply routine pre and post-operative care. However she is now in a life threatening situation and is also unable to communicate her wishes and the treatment that she requires is no longer simple and routine. In such a situation, where a patient is unable to make an informed choice, the health care professional is bound to act in the best interests of the consumer (Health and Disability Code 7.4a) The physiotherapist is therefore justified in beginning treatment although she should consult with the patient's

family if possible and have further discussion with the referring physician. This may appear to be a paternalistic approach but it could be seen to be justified because of the worsening situation and the increasing risk to Joan's life.

Supporters of the paternalistic principle claim that it can be justified if the harms prevented or the benefits provided outweigh the loss of autonomy. It assumes that the more seriously impaired the choice and the more serious and permanent the harm it will produce, the stronger the paternalistic interference may be. In this case Joan is totally impaired in that she is unable to communicate and the harm that would result from non treatment is very serious thus justifying a paternalistic approach.

Once Joan is able to communicate and to fully understand the consequences of any decision she might make about further treatment, the situation needs to be reassessed and treatment terminated if this is what the patient requests.

References

New Zealand Society of Physiotherapy Code of Ethics 1995 Guidelines

Code of Health and Disability Services Consumers' Rights 1996

At the Centre

Things have been hectic at the Centre since Alastair Campbell's departure. We have heard from him a few times since then, he and his family are starting to settle in at Bristol. Alastair is embarking upon establishing a centre at Bristol Medical School. We're anticipating future contact with the Bristol centre when its up and running. We're also hoping that we will get some news of UK bioethics developments from our Bristol correspondent.

Professor Gareth Jones is Acting Director of the Centre in the interim. Professor Jones was one of the prime movers behind the establishment of the Centre in 1988 and knows its objectives and activities well, so the Centre is lucky to be able to be under his direction while the Directorship is advertised. We're hoping that a new director will be here by the end of the 1997 first semester.

Since the last issue of the Report the Centre has produced two large consultation documents. Hamish Broadbent and Barbara Nicholas have finished working on a report commissioned by the National Testing Centre, New Zealand Genetic Services. The Report investigates the issue of *Consent For New Born Metabolic Screening*.

Sam Bloore and Grant Gillett prepared *A New Zealand Report On Euthanasia* for the New Zealand Medical Association and the Ministry of Health. The Report considers recent major legislative changes (the Northern Territories Bill) and possible New Zealand legislative changes.

The Centre's *Euthanasia: Resources For Community Discussion* books have been selling well. Correspondence with people who have used the resources has been positive. We still have some copies of the resource kit. They are selling for \$25 plus \$1 postage and packing in New Zealand (outside of New Zealand there will be a greater postage cost depending upon where you are).

Proceedings of the 1996 Bioethics Summer Seminar are now on sale (for more info see the major notice in this issue). We tried to keep the cost down as much as possible while at the same time producing a high quality publication. University of Otago Press have done a great job in producing an attractive volume. For more information about the Proceedings see the poster in this issue of the Report.