



Medical Paternalism v Patient Autonomy

By Shona Anne Thomas



8 October 2020

The Hippocratic Oath is a time-honoured guideline for physicians that has been tweaked over the years to better suit modern times. Despite these refinements, one aspect that has not changed is the central theme of beneficence requiring the physician to use his or her expert knowledge and skills to benefit the patient. This is also echoed in the Declaration of Geneva, where it states, “*the health of my patient will be my first consideration*”. Thus, a physician is duty bound to always act in the best interest of the patient.

However, the devil is really in the detail as the “*best interest*” of a patient can be viewed with bifocal lens. What may be considered by a physician to be best for the patient may not coincide with the patient’s view, causing much debate between two schools of thought — i.e. that of medical paternalism and patient autonomy. In certain instances, the conflict between these two schools of thought may amount to a medical negligence lawsuit and the finding of liability on the part of the physician.

Medical paternalism

Back when physicians were perceived as altruistic professionals of the highest pedestal in society, the practice of medicine was considered a mystery to the layman. The lack of easy information meant unquestioning obedience by the patient to the paternalistic views and decisions of the physician. “Medical paternalism” is where a physician’s interference with the patient’s freedom of action is justified on the grounds of the patient’s best interest.¹

This traditional school of thought stems from the idea that the patient (being medically untrained) is unable to comprehend his own medical condition. Thus, the need for the physician to act in the capacity of a benevolent parent, making medical decisions on the patient’s behalf. Out of the many examples of medical paternalism, one of the simplest forms would be the physician’s act of withholding information from a patient fearing that he or she might refuse a much-needed medical procedure.

¹ Weiss G B, “Paternalism Modernised” (1985) 11 Journal of Medical Ethics, at p 184



Patient autonomy

Day in and day out, we make constant decisions on how to live our lives. Given that autonomy is “the capacity to think, decide and act on the basis of such thought and decision freely and independently”,² patient autonomy amounts to the patient’s right and ability to make his or her own medical decisions. Over the last few decades, patient autonomy has certainly become one of the leading principles in medical ethics³ particularly because the ability to assert control over one’s own body has become recognised as a fundamental human right. Beauchamp and Childress explain:

“To respect autonomous agents is to acknowledge their right to hold views, to make choices, and to take actions based on personal values and beliefs. Such respect involves respectful action, not merely a respectful attitude... Respect, in this account, involves acknowledging the value and decision-making rights of persons and enabling them to act autonomously, whereas disrespect for autonomy involves attitudes and actions that ignore, insult, demean or are inattentive to others’ rights of autonomous action.”⁴

Modern demands of medicine

Though physicians of yesteryears made all the decisions for their patients, modern medicine has moved into a more enlightened era of care, putting medical paternalism under attack. The clash between medical paternalism and patient autonomy is best explained by Lord Scarman, who held:

“... the [physician]’s concern is with health and the relief of pain. These are the medical objectives. But a patient may well have in mind circumstances, objectives, and values which he may reasonably not make known to the [physician] but which may lead him to a different decision from that suggested by a purely medical opinion.”⁵

To build upon Lord Scarman’s point, it cannot be denied that the relative importance attached by patients to quality of life as against length of life, or to physical appearance or bodily integrity as against the relief of pain, will vary from one patient to another.

It is for this reason that in this day and age, physicians are legally required to involve their patients in the process by explaining their medical condition, treatment options, risks, and so on. Failure to do so exposes the physician to the risk of being sued by the patient. It is a hard line for physicians to navigate between the duty to always act in the “*best interest*” of the patient, avoid tendencies of medical paternalism and

² Keown J, “To Treat or Not to Treat: Autonomy, Beneficence and the Sanctity of Life?” (1995) 16 Singapore Law Review 360, at 362

³ Gillion R, ‘Ethics needs principles – four can encompass the rest – and respect for autonomy should be ‘first among equals’, (2003)

⁴ Beauchamp T L and Childress J F, Principles of Biomedical Ethics (Oxford University Press, 2009)

⁵ Sidaway v Bethlem Royal Hospital Governors [1985] 1 All ER 643



respecting patient autonomy. Classic examples of patient autonomy that must be respected by the physician are:

- (a) The decision of a Jehovah's Witness to refuse blood transfusion although without it, he or she will die.⁶
- (b) The refusal of a woman in labour to consent to a Caesarean section although without such an operation, she and the foetus may die.⁷
- (c) The patient's decision whether or not to undergo a proposed operation having considered the risks associated with such decision.⁸

Bottom line, it does not matter if the individual physician considers the patient's decision to be foolish or reckless, such a decision is still up to the patient to make. The exception whereby medical paternalism is justified is when the patient lacks capacity; has explicitly or by implication given consent; or when it can be reasonably concluded, from the knowledge of his emotional and cognitive make-up, that he would approve of such treatment. Where a paternalistic physician ignores the principles of patient autonomy and carries on treatment without informed consent, such actions are recognised by law to amount to both a crime and a tort (trespass to the person and/or negligence).⁹

To avoid such liability, physicians are reminded to work collaboratively with patients by having full and frank discourse. After all, the patient's right of "bodily integrity"¹⁰ is not a huge ask that impedes the physician from carrying out his or her duty.

If you have any queries, please contact the author, **Shona Anne Thomas** (sat@lh-ag.com).

Published by the Medico Dento Practice

© Lee Hishammuddin Allen & Gledhill. All rights reserved.

⁶ *Newcastle upon Tyne Hospitals Foundation Trust v LM* [2014] EWHC 454 (COP); *University of Malaya Medical Centre v Choo Chee Kon & Anor* [2008] 3 MLJ 278
⁷ *St George's Healthcare NHS Trust v S* [1998] 3 All ER 673
⁸ *Chester v Afshar* [2004] UKHL 41 (HL)
⁹ *Sidaway*, *supra* n 5
¹⁰ Herring J, 'Medical Law and Ethics' (2018)