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JUVENILE PATIENTS AND THE PROBLEM OF CONSENT

Obtaining a legally 'safe' consent where the patient is a minor, i.e. an unmarried person below the age of 21 years, is a matter of general concern to medical practitioners. Unfortunately our law is not entirely free from difficulties in this regard.

Where a parent or guardian is available to give consent, there are no serious problems. The doctor will, as a rule, be perfectly safe in relying upon the consent of either the father or the mother, or in the case of orphans or adopted children, of the person who is the legal guardian of the child. In the event of a direct conflict between the father and the mother of the child, the doctor would be safe to give effect to the father's views, except where these are manifestly against the medical interests of the child. Where the parents request an operation which is medically indicated, but the minor refuses to submit to it, the doctor would of course, be quite safe in relying upon parental consent.

A real difficulty presents itself where the child consents to medically indicated treatment, but the parents, on religious grounds or for other reasons, refuse to co-operate. Does the law allow the doctor to override the parents' opposition? There seems to be no unequivocal yes or no to this question. But legal opinion* favours the view that where the child has reached sufficient intellectual maturity to be able to appreciate the nature of the operation, his consent in itself will be sufficient.

What is the position where no parent or guardian is readily available to be approached for consent? If it is a matter of life or death, the medical superintendent of a hospital can give the necessary consent, provided that he has obtained the views of another medical practitioner. Express provision for such emergency consent is made by the Children's Act, 1960. The superintendent must satisfy himself on two points: firstly, that the operation (or treatment) is necessary to preserve the life of the child, or to save him from serious and lasting physical injury or disability; secondly, that the treatment indicated is so urgent that it ought not to be deferred for the purpose of consulting the parent or guardian of the child.

The Children's Act also makes provision for ministerial consent in the case of neglected children. In addition to these provisions, the Act provides for consent being given in respect of pupils in certain institutions (reformatories, industrial schools and children's homes) by the management of such institutions or in serious cases by the Minister; in emergencies the consent of the principal or head of the institution will suffice.

Quite apart from these specific statutory provisions, the question arises whether a minor can independently consent to an operation or treatment. This question becomes of paramount importance where it is not a case of dire emergency and where the minor is not a neglected child in terms of the Children's Act or the inmate of an institution. Take the example of a scholar, university student or office employee in his late teens who consults a doctor or dentist. His parents live in a distant town or are on an overseas tour. His ailment is not such that there is an imminent threat to his life, but there is a clear indication of medical treatment, which might involve surgery, without undue delay. The patient is obviously a responsible individual who can make an intelligent evaluation of the situation after having been informed of the diagnosis. It would seem grossly unrealistic, if not unprofessional, for the doctor to defer treatment for several days or weeks until the parents can be reached and asked whether they consent to the treatment indicated. What does the law say of this situation? Can the minor validly consent? If so, is there any minimum age requirement for consent?

Unfortunately no clear answer can be gained from our legal sources on these questions. There is no statutory provision which regulates this situation. Nor, as far as can be ascertained, has any judicial decision been handed down. The answer is therefore largely a matter of speculation. Legal opinion tends to support the view that a minor can, in fact, independently consent to any form of medical treatment or operation, provided that he has reached such a level of intellectual maturity that he can properly appreciate the nature of the treatment or operation. It has been suggested that there is no fixed age of consent and that each case must be considered on its own merits. Factors such as the intelligence, experience, general educaitonal level and social background of the child will be relevant. The age of consent which applies in South African criminal law in regard to sexual offences, which ranges from 12 years to 19 years, does not seem to be of great help here, because these age limitations are based upon entirely different considerations from the point of view of public policy. If the general trend of American court decisions on medical liability can in any way be considered as a guide, it would be legally dangerous to rely on the exclusive consent of a child below the age of 15 years.

Until this issue has been finally settled in South African law, it would clearly be advisable for doctors to act with caution. A juvenile patient should be questioned in order to evaluate his level of intellectual development and if the doctor has satisfied himself on this score, he should carefully record his own impressions as well as other relevant facts.

There is at present a bill on human transplantation pending in Parliament which was recently reported upon by a select committee. It is also known that problems connected with therapeutic abortion are being officially studied. No doubt these investigations will clear up a number of

vital medico-legal points. But there are various other questions that remain unanswered, such as the present one. Perhaps the time has come for a comprehensive survey to be undertaken jointly by the medical and legal professions with a view to formulating proposals for legislation to fill existing legal *lacunae*.

*Legal opinion quoted in this article is from Strauss, S. A. and Strydom, M. J. (1967): *Suid-Afrikaanse Geneeskundige Reg*, pp. 188 *et seq.* Pretoria: Van Schaik.

MEDIESE NAVORSINGSRAAD

Mediese navorsing in Suid-Afrika is nie meer in sy kinderskoene nie, soos daar reeds oor en oor op alle gebiede bewys is, en derhalwe is dit 'n wyse en welkome stap dat ons nou oor 'n Raad beskik wat kan toesien dat die navorsing op gekoördineerde wyse onderneem word. Dit is te duur om twee laboratoriums te hê wat met presies dieselfde werk besig is en waarin daar wetenskaplikes werk wat dieselfde ondersoeke onderneem. Korrekte en verstandige kontrole van sulke parallelle projekte sal seker een van die Raad se belangrike funksies moet wees.

Gedurende 'n noenmaal in Pretoria het Sy Edele dr. Carel de Wet, Minister van Gesondheid, die lede van die nuwe Navorsingsraad onthaal en as eregas was teenwoordig die Staatspresident. Dr. de Wet het in baie duidelike en onomwonde terme daarop gewys dat geen raad soos die huidige kan funksioneer sonder geld nie, en dat geen mediese navorsing moontlik is sonder heelwat fondse nie. Hy het 'n beroep op alle individue en alle organisasies gedoen om geld beskikbaar te stel om die nuwe Raad in staat te stel om behoorlike en vrugte-afwerpende navorsing in Suid-Afrika te reël en te ondersteun.

Hart en ander orgaanoorplantings is operasies waarvoor baie groot somme geld nodig is en die navorsing daaraan verbonde sluk 'n nog groter som in, maar gelukkig is daar reeds aansienlike bedrae vir hierdie werk beskikbaar gestel. Dit is nou ook belangrik dat geen van die ander rigtings wat vir ons land so uiters belangrik is gebrek ly nie. Die Staatspresident het hom juis in dié opsig sterk uitgespreek en 'n waarskuwing gerig dat ons nie die medisyne van die platteland moet laat skade ly nie. Hy het daarop gewys dat dele van die platteland feitlik totaal van dokters ontvolk raak omdat die aantrekkingskrag van die stede met hul navorsingsfasiliteite vir dié dokters te groot is. Dit is dus noodsaaklik, het die Staatspresident verder gesê, dat die Raad ook aandag moet gee aan die behoeftes van die pasiënt op die platteland, want hoe goed of hoe opspraakwekkend die navorsing wat ons doen ookal is of nog gaan wees, moet ons nooit uit die oog verloor dat die belang van die volk die eerste oorweging moet wees.

Dit sal sekerlik verblydend wees as ons in later jare kan terugkyk en kan ontdek dat die instelling van hierdie Mediese Navorsingsraad tot gevolg gehad het die verbetering, en selfs die versekering van mediese dienste aan die afgeleë gebiede van die land waar daar op die oomblik maar bitter min geneeskundige versorging beskikbaar is. Of dit wel die funksie van die Raad is om toe te sien dat mediese dienste behoorlik versprei word, is twyfelagtig; daarvoor is die Geneeskundige en Tandheelkundige Raad reeds daar, maar die nuwe Navorsingsraad kan wel sorg dra dat ondersoeke na gesondheidsaangeleenthede en beter metodes om die dienste tot by die pasiënt te bring, wel onderneem word. 'Ons doen groot navorsing', het die Staatspresident gesê, 'en intussen verbrokkel die volk van onder af'.

Spesialisasie op die gebiede van grootskaalse volksgesondheidsaspekte is vir ons navorsers belangrik. As slegs een voorbeeld kan ons neem dat elders in die wêreld bilharziase op groot skaal slegs onder die armer volke voorkom, terwyl in Suid-Afrika ons die feitlik unieke toestand het dat die siekte hier algemeen is. Terselfdertyd het ons die geld om die nodige navorsing en die bestryding te onderneem.

Ons wens die lede van die Navorsingsraad geluk met hul welverdiende aanstelling en ons gaan vol vertroue die toekoms tegemoed met die hoop dat die vrugte van hul werksaamhede binnekort te sien sal wees.

GESKIEDENIS VAN GENEESKUNDE

Ons sal binnekort 'n gereelde rubriek in die *Tydskrif* instel vir artikels oor die geskiedenis van die geneeskunde. Die reeks sal ingelei word met 'n aantal kort lewensgeskiedenisse van beroemde name in ons beroep, en ons wil graag ons lesers nooi om tot hierdie rubriek by te dra. Suid-Afrika het reeds 'n groot aantal vooraanstaande en kleurryke medici opgelewer en dit is belangrik dat besonderhede van hul loopbane nie vergeet word nie. Nie slegs hul mediese prestasies is interessant nie, maar daar is ook verskeie lede van die beroep wat op ander gebiede presteer het. Ons dink byvoorbeeld aan die kookkuns van wyle dr. C. L. Leipoldt, 'n voormalige redakteur van die *Tydskrif*, of aan die digterstalent van dr. A. G. Visser.

Indien enige leser interessante gegewens besit i.v.m. geskiedkundige gebeure in die geneeskunde, of miskien belangrike historiese dokumente kan opdiep, sal ons graag daaraan publisiteit wil gee. Mens moet ook nou, voor dit te laat is, intensief aandag gee aan die tradisionele medisyne van die Bantoe en ander rassegroepe, want as ons nie gou maak nie, sal hierdie belangrike volkekundige besonderhede verlore raak. In dié opsig het die Mediese Geskiedenis Museum in Johannesburg reeds waardevolle bydraes gelewer.

Burrows[1] het, op versoek van die Mediese Vereniging, reeds baanbrekerswerk op die gebied gedoen, maar dit sou jammer wees om sy werk nou nie op te volg en aan te vul nie.

1. Burrows, E. H. (1958): *A History of Medicine in South Africa*. Kaapstad: A. A. Balkema.