

CONSENT AT THE END OF LIFE

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Practical issues

- Hydration and nutrition
- Analgesia
- Cardiopulmonary resuscitation

Independent Review of the Liverpool Care Pathway

- “Refusing food and drink is a decision for the patient to make, not clinical staff” (p27)
- Use of syringe driver should be discussed with patient, relatives and carer (p30)
- Agreeing not to attempt CPR does not amount to consent to start the LCP (p32)

Montgomery

- Landmark Supreme Court decision of 2015: informed consent
- “The doctor is therefore under a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment, and of any reasonable alternative or variant treatments.” (Lords Kerr and Reed)

Therapeutic Exception

- Disclosure “seriously detrimental to the patient’s health.”
- “Circumstances of necessity”

Patients' Individuality

- The significance of a given risk is fact-sensitive
- The assessment of risk is “sensitive also to the characteristics of the patient.”

Alternatives

- “It is not possible to consider a particular medical procedure in isolation from its alternatives”
(Baroness Hale)

Informed Consent and Causation

- “The question of causation must also be considered on the hypothesis of a discussion which is conducted without the patient’s being pressurised to accept her doctor’s recommendation” (*Montgomery*)
- *Chester v Afshar*

Legal Developments after *Montgomery*

- Several first instance judgments
- *Spencer v Hillingdon Hospital NHS Trust*:
“Justifiably aggrieved”
- Various important issues remain to be determined.

Grimstone

- Permission to appeal to CA granted on 6 June 2016; to be heard in Feb 2017
- Does a surgeon have a duty to disclose his links with medical device manufacturers?
- If a patient would have found the decision difficult if properly consented, will they be entitled to a remedy (following *Chester v Afshar*)?

Conclusions

- The *Montgomery* principles will apply to end of life decisions.
- Where a dying person retains capacity, they should be properly consented following the *Montgomery* principles.
- Be aware of patients' individuality and different priorities at the end of life.