

Euthanasia drugs characterised as ‘palliative care’ rather than ‘end-of-life treatment’

Syme v Medical Board of Australia (Review and Regulation) [2016]
VCAT 2150

Key Points

- Dr Syme, an 81-year-old urologist and vice-president of advocate group Dying with Dignity supplied Nembutal as part of his counselling services to terminally ill patients.
- Disputing a condition placed on his licence by the Medical Board of Australia, Dr Syme fought for his right to provide terminally ill patients with Nembutal.
- The Victorian Civil and Administrative Tribunal noted that it is not their role to determine acceptable standards of medical practice with respect to physician assisted death or what ‘is or is not legal’ in relation to end-of-life medication. These issues were only examined to provide relevant context.
- Dr Syme was successful, with the Tribunal’s decision potentially representing a new direction in the characterisation of euthanasia drugs as ‘palliative care’ rather than ‘end-of-life treatment’.

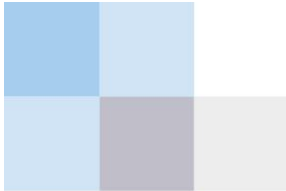
Background

Dr Syme is a practitioner of both general and specialist registration. Over the course of his career as an urologist, he has consulted and headed up a department for male trauma victims. Through this experience, he developed counselling skills “beyond the experience and expertise” of most urologists, despite not having any psychiatry specialisation. Dr Syme has counselled terminally ill patients on their end of life wishes since 1974 and has provided approximately 170 patients with Nembutal as part of counselling in this time.

On 27 January 2016, the Medical Board of Australia received a mandatory notification from a general practitioner stating that his patient, Bernard Erica, who was terminally ill with cancer, had disclosed that Dr Syme intended to assist Mr Erica end his life by providing him with Nembutal.

As a result of the mandatory notification, Dr Syme had a condition placed on his medical licence by the Medical Board of Australia, pursuant to s156 of the *Health Practitioner Regulation National Law (Victoria) Act 2009*, in relation to counselling he was providing to patients. The Board ordered Dr Syme not to “engage in the provision of any form of medical care, or any professional conduct in his capacity as a medical practitioner that has the primary purpose of ending a person’s life.”

Dr Syme appealed this decision. On 20 December 2016, the Victorian Civil and Administrative Tribunal



handed down a decision in favour of Dr Syme in removing the restrictions placed on his medical licence. A crucial consideration of the Tribunal was the palliative effect of Dr Syme's provision of Nembutal, along with Dr Syme's evidence as to the reasons behind offering this Nembutal during counselling.

The Law

The Tribunal accepted Dr Syme's submission that the primary purpose in supplying Nembutal was not in fact to cause death, but rather, to ease psychological suffering. This was consistent with the widely accepted, though acutely difficult to apply, principle of "double effect". Professor Maddocks, a consultant in palliative medicine, explained that the term "double effect" is commonly invoked to describe the distinction between intended death, which is euthanasia, versus a death that is merely foreseen as a consequent side-effect. Consistent with Clause 1.4(c) of the *Australian Medical Association's Code of Ethics*, medication may be given to palliative patients to relieve their pain and suffering despite it being foreseeable, and even inevitable, that the treatment will hasten death.


The Tribunal held that given an important aspect of palliative care is to relieve 'existential suffering and psychological pain', the supply of Nembutal can be seen as more than the simple supply of a drug. Rather, Nembutal has been shown to improve both the physical and psychological suffering of terminally ill patients simply due to the knowledge that they do have the option to end their pain and the burden to loved ones if they choose to do so. While the Nembutal will clearly hasten death if it is ingested, Dr Syme's position was that ingestion of the drug is not always necessary, and often, the supply of it will be enough to ease the suffering of his patients.

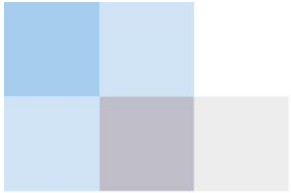
The fact that Dr Syme's practice is limited to advising and assisting patients who are in the final stages of terminal illness and have themselves sought his help was a relevant consideration. Dr Syme does not advertise for patients and therefore has contact only with patients who may not find traditional palliative care suitable. As such, it was submitted that there cannot be said to be a degree of 'public risk' as there is no 'public contact', with the only patients in Dr Syme's care being the very small segment of the public who do not find traditional palliative care suitable.

In addition, Dr Syme's evidence emphasised that he does not provide Nembutal to every terminally ill patient who approaches him. Rather, there is mandatory counselling and contact with the patient's family before Nembutal will be offered. In addition, Dr Syme does not seek to replace the patient's treating doctors, he merely offers a counselling service in addition to whatever medical treatment is being undertaken.

Lessons Learnt

In determining that Dr Syme's practice and counselling is intended to *relieve suffering* and not primarily aimed at ending a person's life, the Tribunal was "satisfied that the holistic approach adopted by Dr Syme is entirely focused upon supporting the patient in life rather than pre-empting the patient's death."





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