

Fate of independent medical ethics decisions in court's hands

JAN 20, 2021

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Editor's note: *The U.S. Supreme Court has denied the petition for certiorari discussed below.*

If a Texas court ruling is allowed to stand, the state's hospitals and doctors will have no room to make end-of-life care decisions based on independent medical ethics or individual conscience, physicians and other stakeholders tell the U.S. Supreme Court.

The Litigation Center of the American Medical Association and State Medical Societies joined the Texas Medical Association and more than a dozen other organizations with different perspectives in filing an amicus brief that urges the U.S. Supreme Court to overturn the Court of Appeals of Texas, Second District ruling that classifies private hospitals and doctors as "state actors" who can be held liable for damages under the federal civil rights law for end-of-life care decisions they make.

Physicians say the lower court ruling opens the door to litigation abuse, holding that doctors and hospitals could be held liable even if they follow carefully laid out steps in the Texas Advance Directives Act (TADA)—a law similar to advance directives laws in other states. Numerous Texas stakeholders helped craft the law that balances everyone's needs: Medical providers have a path to withdraw from providing an intervention violating their ethics or deeply held sense of morality and patients or their decision-makers have a structured framework to seek a transfer to a medical provider willing to provide the requested intervention.

"By classifying this private hospital as a state actor, the court created an ongoing role for itself—and future state and federal courts—in second-guessing these most private end-of-life decisions. And because its state-action holding is of federal constitutional dimension, there is nothing that the Texas Legislature or any state legislature could do to restore the full protective effect of this statute. Only this court can hold the line on state action," the brief tells the U.S. Supreme Court.

In addition to physician organizations, pro-life organizations, medical and nursing associations,

children's hospitals and pediatricians, hospitals and hospital systems and other stakeholders in the patient care system jointly filed the brief in the case, *Cook Children's Medical Center v. T.L., a Minor*. The hospital asked the U.S. Supreme Court to hear the case after the Supreme Court of Texas declined to hear the appeal.

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center's case-selection criteria.

Court must restore certainty

The lawsuit stems from a decision made about care for a girl born prematurely at Cook Children's Medical Center in Fort Worth, Texas, in early 2019. She has a congenital heart defect and other severe health problems. She lives on artificial life support and her condition is terminal.

After months of discussions and counseling, the girl's physicians recommended she be removed from life support that they determined was "not medically, ethically or morally appropriate" because the aggressive intervention would only prolong her pain. The girl's family disagreed and she remains on life support because of the ongoing lawsuit.

The treating physician invoked the TADA. The law provides physicians and hospitals a safe harbor from civil and criminal liability for end-of-life decisions if they meet a number of stringent due process requirements, including consulting with an ethics committee that seeks input from all stakeholders and issues a neutral decision on the appropriate course of action. The law also gives the family time to find alternative care and the law ensures they are provided with detailed medical records and other information to help assist them.

The TADA creates a "zone for private liberty" where "private determinations about end-of-life questions can be made without the specter of state intrusion by prosecutors or locally elected judges," the brief tells the court.

"That certainty has vanished," the brief says. "Now medical providers face a trap. If they act within the protections set up under state law, the court of appeals reasons, then they become state actors subject to federal constitutional claims seeking injunctive relief or money damages."

The court, the brief urges, should reverse the state appellate decision because "failing to draw a clear line against this misuse of [federal law] sows doubt about the very premise of state advance directives laws: whether they can truly offer certainty to hospitals, medical providers and patients who rely on them."

Law consistent with medical ethics

The brief tells the court that TADA is consistent with the AMA Code of Medical Ethics, which says that a physician can abstain from providing a requested medical intervention when his or her own medical judgment or ethics demands it. The guidelines also suggest that physicians strive to transfer a patient to someone who is ethically willing to provide the treatment.