

Act n° 2016-87 of February 2, 2016 established in France new rights for patients and for the terminally ill

While forbidding euthanasia and assisted suicide, this act confirms the law dating back to 2005 and goes more into details about some topics such as eliminating suffering. It provides for a procedure of a deep and prolonged sedation until death.

The secondary legislation which implements the act describes collegial procedures, the advance directives and deep and prolonged sedation until death. This act has entailed a change in the medical deontology code.

1) Forbidding of unreasonable obstinacy

New regulations state that medical treatments shall not be implemented when they are the result of unreasonable obstinacy.

When they appear useless or disproportionate or when they have no other effect than artificially prolonging life, medical treatments may be interrupted or not implemented according to the wishes of the patient or if the latter is not in a position to express his/her wishes, according to a collegial procedure which is set down through regulation.

The collegial procedure takes the form of a dialogue with the members present of the healthcare team, if it exists and also of the gathering of a reasoned opinion from, at least, one other doctor chosen as a consultant. There must be no hierarchical link between the doctor in charge of the patient and the consultant. The reasoned opinion of a second consultant may be gathered by the first two doctors if either of them considers it necessary.

Artificial nutrition and hydration constitute treatment which can be stopped.

2) Deep and prolonged sedation until death

Upon the request of the patient to avoid all pain and not to undergo unreasonable obstinacy, deep and prolonged sedation bringing about an altered state of consciousness to be continued until death and combined with analgesia and the ending of all life-support systems, shall be implemented in the following cases:

1° When a patient suffers from a serious and incurable condition which is life-threatening in the short term -some hours or some days- and whose pain is non-responsive to treatment;

2° When the decision of a patient suffering from a serious and incurable condition to stop treatment has life-threatening consequences in the short term and could lead to unbearable pain.

When the patient cannot express his/her will and in keeping with the right to refuse unreasonable obstinacy in the case where the doctor stops life-support treatment and applies deep and prolonged sedation bringing about an altered state of consciousness to be continued until death and combined with analgesia.

Deep and prolonged sedation combined with analgesia shall be implemented according to the collegial procedure which allows the medical team to check in advance that the implementation conditions have been met.

Upon the request of the patient, deep and prolonged sedation can be implemented at his/her home, in a health facility or in a nursing home.

The doctor shall use all the sedatives and analgesics necessary to treat the intractable pain of a patient in an advanced or terminal stage, even if this could lead to the shortening of his/her life. The doctor must inform the patient, the family, or failing that, close friends of the patient.

The entire procedure which is followed is included in the medical records of the patient.

Every person shall be informed by the health professionals of the possibility of homecare as long as his/her condition allows it.

3) Advance decisions

Every person has the right to refuse or to not receive treatment. Nonetheless, the patient shall continue to be followed by the doctor especially regarding his/her palliative treatment.

The doctor is obliged to respect the will of the person once that person has been informed of the consequences of his/her choices and of their seriousness. If, through his/her wish to refuse or to interrupt treatment, the person puts his/her life in danger, he/she must reiterate that decision within a reasonable time lapse. It is possible to address another member of the medical staff. The entire procedure is noted in the medical records of the patient. The doctor safeguards the dignity of the dying person and ensures the quality of the end of life by providing palliative care.

This law puts forward the importance of the collegial procedure, the advance decisions, or failing this, the designated support person, the family or close friends of the patient.

Every adult can draw up advance decisions in anticipation of the case where, one day, they would not be in a state to express their will. Such advance decisions express the will of the person regarding the end of his/her life concerning the conditions of the continuing, the limiting, the stopping or the refusal of treatment or medical procedures.

They are not subject to a limited validity period. They can be revised or revoked at any moment and by any means.

Advance decisions must be followed by the doctor in every case of investigation, procedure or treatment, except in an emergency situation requiring the necessary time for a complete assessment of the case and when the advance decisions seem entirely inappropriate or inconsistent with the medical condition.

The decision to refuse the implementation of advance decisions, felt by the doctor to be entirely inappropriate or inconsistent with the medical condition, shall be taken according to a collegial process which is set down through regulation and is noted in the medical records. It is made known to the designated support person appointed by the patient, or failing that, the family or close friends of the patient.

4) The support person

Every adult may designate a support person who may be a family member, a close friend or the doctor. This person will be consulted in the case where the patient him/herself is not in a state to express his/her will or to receive the necessary information for this purpose. This person takes into

account the will of the patient. Their attestation takes precedence over all other attestation. This designation is written and co-signed by the designated person. It can be revised or revoked at any time.

If the patient so wishes, he/she may be accompanied by the designated support person in all procedures and at all medical appointments so that the support person may help the patient in taking decisions.

This designation is valid for the entire length of hospitalization unless the patient decides otherwise.

In the case of patient follow-up, the attending doctor ensures that the patient is informed of the possibility of designating a support person and if necessary proposes to him/her to designate such a person.

In the case where a person is the subject of guardianship, he/she may designate a support person with the authorization of the judge or the family council, if it has been constituted. In the case where the support person has been designated prior to the application of guardianship, the family council or if necessary, the judge, may confirm the designation of this person or may revoke that designation.

Conclusion

This law may be considered as a political answer to the medical problems related to the end of life. Cases for the use of deep and prolonged sedation until death precisely provided for by law, collegial procedure, right for patients to apply for continuing treatments and for refusal this sedation may be regarded as legal safeguards to avoid any systematical practice of this type of sedation. It is up to the professionals to use it in due form while respecting its implementation.

It means medical recommendations, especially about sedation.

That is why the SFAP (French Society of Palliative Care) and the High Health Authority work together with other learned communities. Training health professionals for assessing criteria of deep and prolonged sedation until death, carrying out the collegial procedure and advance directives, is of the essence. SFAP which takes part in applying this law, will keep an eye on dysfunctions.

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