who cared for Kerrie?

***Lizzie Groom** considers the consequences of a hard case*

On 18 September 2007 Kerrie Wooltorton, a 26-year-old woman, was rushed into Norwich University Hospital A&E department having called an ambulance after drinking lethal antifreeze in an attempt to commit suicide. What happened next turned what is, tragically, a fairly common occurrence into headline news. Kerrie was well known to the department, as this was her ninth suicide attempt that year.

All other times she had agreed to dialysis treatment. This time she refused. She produced an advanced refusal, signed three days prior, stating she did not want any curative treatment and was '100 per cent aware' of the consequences of her refusal.[1] She said she had only called an ambulance because she didn't wish to die alone or in pain. Ms Wooltorton was described by staff as appearing 'calm'.

However her history revealed that she suffered from an emotionally unstable personality disorder, and was known to mental health services.[2] Picture the scene in a busy casualty department as staff were left trying to determine what to do. Eventually the staff with the support of hospital lawyers agreed not to start dialysis and Kerrie died four days later.

The story returned to the media spotlight in 2009 when the Coroner at the inquest exonerated the medical team from blame. Again the case provoked strong feelings in the public with widely conflicting opinions of what ought to have been done. Andy Burnham, the current Health Secretary, remarked on the case saying it was taking the law into 'new territory'.[3] While we can sympathise with the staff who undoubtedly had the best of intentions, Kerrie's case highlights some of the alarming consequences produced by current thinking in medical ethics. This tragic story also hits closer to home. I found Kerrie's story a real challenge. As future doctors how should we care for our patients? And how should we care for those around us?

capacity and consent

all about 'advance refusals'?

Unfortunately there was considerable confusion as to what the law allowed a doctor to do or not do in this situation. The 'living will' which Kerrie came in clutching was seized upon by the press in an unhelpful way. Advanced refusals, commonly known as 'living wills', were introduced with the intention that they could help to counter inappropriate and excessively burdensome treatment

that could often be imposed on the terminally ill by well meaning, but perhaps misguided doctors. The intention was certainly good, although critics argued that it could be misused, especially in the context of the euthanasia debate. The *CMF file* 'Advanced Directives' by James Paul is helpful and offers a full discussion of the issues involved.[4]

Mental Capacity Act 2005

'For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

A person is unable to make a decision for himself if he is unable:
(a) to understand the information relevant to the decision,
(b) to retain that information,
(c) to use or weigh that information as part of the process of making the decision, or
(d) to communicate his decision (whether by talking, using sign language or any other means)'[7]

However, Kerrie's 'advanced refusal' was a diversion from the central issues. It was not applicable, since Kerrie came in fully conscious and able to communicate with staff. Had Kerrie come into A&E unconscious with a *valid* advanced refusal then the legal position would be less clear, as many critics had forewarned before the legislation was introduced. But Kerrie was not unconscious. Additionally even if she had been unconscious, Kerrie's 'advance refusal' had not been witnessed, rendering it invalid.

assessing capacity

So what are the relevant legal issues in this case? As Sheila McLean, Professor in Medical Ethics and Law at Glasgow University clearly explains on her *BMJ* blog,[5] this case rests on whether Kerrie had capacity to refuse treatment. Capacity may be a familiar concept for some students, but others may be less sure about it. Don't worry - this won't get too technical - but it is important for us to be clear on our legal obligations. Capacity (or competence) is the legal term used to describe whether or not the patient is legally able to make treatment decisions. English law maintains that an adult of sound mind has the right to refuse treatment for rational or irrational reasons and this should be respected, even if the decision leads to death. If treatment is imposed on a competent adult it amounts to a 'battery' (assault) and this is a serious criminal offence. Clearly it is important to ascertain if a person has

capacity. The Mental Capacity Act 2005[6] lays out tests (see box on previous page).

Communication can be difficult for some patients (eg asylum seekers, patients suffering from strokes) and doctors and others involved in care should try to find ways around these obstacles so a patient can express their views.

Alcohol, drugs and the severity of an overdose can impair a person's capacity temporarily. In these cases the doctor is allowed to give essential life saving treatment in order to restore the patient to a state where they are competent to make decisions. If a patient is permanently incompetent then doctors are expected to make treatment decisions that are believed to be in the patient's best interest. It is wise to seek legal advice if unsure how to proceed.

mental illness and capacity

Did Kerrie have capacity to refuse treatment? Well none of us were there. We didn't meet Kerrie or assess her psychological state so can't speak with complete confidence. However the details of the case, as disclosed in the press, raise serious concerns as to her ability to make this decision. Can someone who has recently repeatedly attempted suicide be of sound mind? Kerrie was known to have been depressed since receiving news that she would struggle to become pregnant. Severe depression is likely to limit a person's ability to weigh information. Kerrie also suffered from a personality disorder; in itself this does not amount to a lack of capacity but combined with the other details it could throw doubt on her capacity. Two leading consultant psychiatrists, Bashir and Crawford, concluded after studying the case that 'depression and emotionally unstable personality disorder are mental disorders, which often impair a person's cognition and emotional health'.[8]

we are wrong if we equate killing with caring

A psychiatric opinion is often essential. If acute mental illness or chronic impairment is believed to be affecting the patient's capacity then they can be detained under the Mental Health Act. Treatment may be commenced if it is believed that the overdose was the consequences of the mental illness.[9]

confused about care

We discussed this case in an ethics tutorial recently and I found the discussion troubling. We were distressed to hear that Kerrie had suffered such a painful end to her life and we all agreed that what happened didn't seem right. However, when discussing what could have been done, someone suggested that the caring thing would have been to help Kerrie end her life. Establishing a programme of assisted suicide was proposed, so that depressed individuals such as Kerrie would be helped to end their lives in a more 'dignified way'.

I'm sure that suggestion was motivated by a desire to care. However, we are wrong if we equate killing with caring. What has caused us to lose our way?

all about autonomy

In recent years there has been a dramatic increase in the importance given to the patient's autonomy when making healthcare decisions. Autonomy literally means 'self

rule' and in the healthcare context can be described as the 'freedom that a person has to order his or her life according to his or her own desires and values'.[10] Autonomy has been an important concept in healthcare decisions, but until recently had always been balanced against other values such as beneficence (doing good), non-maleficence (not doing harm to patients) and justice.

The desire for patient autonomy is now at the heart of many of the modern complex medical ethics challenges. Secular ethicist Professor John Harris, a firm supporter of autonomy, writes 'Since it is my life, its value to me consists precisely in doing with it what I choose'.[11]

Rights are the new language of ethics - the 'right to die', or more accurately the 'right to die when and how I choose' (which translates into a 'right to be killed by a doctor') is one of the key arguments in the euthanasia and physician assisted suicide debate. Many commentators, both religious and secular, are questioning whether we have lost our way.[12] Has our attempt to empower patients gone too far? Is too much emphasis placed on autonomy?

all about autonomy: what does the Bible say?

There is much that could be said and the 2005 *CMF File* on 'Autonomy - who chooses?'[13] goes into considerable more detail and has greatly influenced this article. It's well worth a read!

Autonomy can be broken down into three classifications - partial moral autonomy, civil autonomy and libertarian autonomy. Partial moral autonomy refers to the 'right of each person to choose his or her own course of action within boundaries of acceptable standards and norms'.[14] We are created beings, but we are created in God's own image and have been given a certain amount of freedom and responsibility to make decisions.[15] Christian teaching supports this concept of limited autonomy. Civil autonomy describes our right to make choices without pressure or coercion, and is supported in the Bible. God is just and calls us to promote justice for all in our world:

He defends the cause of the fatherless and the widow, and loves the alien, giving him food and clothing. And you are to love those who are aliens, for you yourselves were aliens in Egypt.[16]

Libertarian autonomy promotes freedom to do whatever you like. If there is no God to hold us to account then this view makes sense. The world is our playground and we are free to play by whatever rules we choose so long as our fun doesn't hurt anybody else. This does not fit with the biblical view where mankind is dependent on God who 'gives life to everything'.[17] True freedom is not being able to do whatever we like. It is being free to choose to follow God's commands, no longer being 'slaves to sin'.[18]

doctors: solely service providers?

The growing emphasis on libertarian autonomy in medical ethics threatens the doctor-patient relationship, reducing the doctor to a service provider whose only duty is to carry out their patient's wishes. The renal consultant treating Kerrie stated that he felt it was his 'duty to follow her wishes'.[19] Secular ethicist Marian Verkerk argues against this attitude, saying that 'an overemphasis on self-determination and non-interference can leave patients without appropriate care'.[20]

We must be careful not to coerce or force treatment on vulnerable patients, but we must be equally as concerned not merely to accede automatically to what patients say they want. John Wyatt, Professor of Ethics and Perinatology at University College London, suggests doctors adopt an expert-expert relationship where the doctor works in partnership with the patient to help them work out what they really want, meeting their needs along the way.[21]

called to care

who? everyone

Patients, like Kerrie, who have repeatedly attempted suicide can often be regarded as nuisance patients by staff. In a busy casualty department their needs can sometimes be overlooked in favour of the more acute or sometime more 'deserving' cases. As Christians our attitude should be different. Each human bears God's image and Christ was born as a man. Proverbs 22:2 says 'Rich and poor have this in common: the Lord is the Maker of them all'. For this reason, each human being is worthy of respect. Thomas Sydenham, a leading English physician in 17th Century, makes this point well:

Let him (the physician) remember that it is not any base or despicable creature of which he has undertaken the care. For the only begotten Son of God, by becoming man, recognised the value of the human race and ennobled by his own dignity the nature he assumed.[22]

Jesus never failed to get to the heart of people's problems

If we have this view of individuals then this will shape how we talk to our patients and how we talk about them. It's often tempting to make jokes or comments behind the patient's back. This is incompatible with a Christian view of human dignity and the Bible warns us against such talk:

The tongue also is a fire, a world of evil among the parts of the body. It corrupts the whole person, sets the whole course of his life on fire, and is itself set on fire by hell.[23]

What if patients seem to be making an unwise choice? We should continue to respect our patient even when they make decisions that we do not understand at all. There may be a case where someone appears to have complete capacity, yet still refuses life saving treatment despite your best efforts to persuade them. It is important to maintain a supportive approach. Hopefully if time is taken to listen to the patient they may change their mind. If not, they still ought to be treated with respect.

what? carry each other's burdens

Doctors can sometimes be quick to deal with a patient's immediate and pressing needs, but neglect to explore the deeper underlying concerns. Jesus never failed to get to the heart of people's problems. The healing of the paralytic man in Mark 2 is well known often from Sunday School days, but isn't it striking that Jesus is not content to heal the man's physical needs. In addition he exposes and cures the man's deeper spiritual need.[24]

Whilst it may be entirely appropriate to speak of Christ directly to our patients, this will not always be the case. However, we can strive to be doctors who take the time to listen to our patients, to understand their concerns and look for ways to ease these burdens. Paul tells the Galatian church to 'Carry each other's burdens, and in this way you will fulfil the law of Christ'.[25]

when? all the time

Caring is not just a 9 to 5 calling! Christ calls us to take this attitude of care and concern back home with us too. It is not sufficient to care solely in a professional capacity. Christ commands us to love our neighbour. The Parable of the Good Samaritan is a clear example that our neighbour can be anyone who we see in need.[26] Who are the Kerries in your year? Your church? Your sports team? We are Christ's mission team chosen to show his care for those around us.

how? look up!

I must admit that this doesn't sit comfortably with me. I like the easy life. I choose to spend my free time doing what I want to do. I want to spend my money on my hobbies. I prefer relaxing with my friends. If I continue to look at myself and my wants and needs I will never be motivated sacrificially to serve others.

Such a radical change in outlook is only possible by seeing Jesus' example. The one who had everything gave it all up, becoming nothing[27] and serving those he had created even though it would cost him his life. Paul makes it clear that this should encourage and spur us on so we consider others' needs more important than our own.[28]

so who really cared for Kerrie?

Kerrie was a troubled young woman, clearly lacking support. Everyone involved in the case wanted to do what was best for her. However the current preoccupation with unrestricted patient autonomy reflected in English law resulted in a troubling outcome. As Christians we need to be distinctive in the way we treat patients and also each other. Following Christ's example we should show a concern for the whole person, a desire to share in their struggles and a willingness to meet their needs even if it comes at a cost. In a society obsessed with the right to personal autonomy we are called to restrict our own freedom in order to care for others.

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