

WITHHOLDING TREATMENT FROM DEFECTIVE NEWBORN CHILDREN

By Joseph E. Magnet and Eike-Henner W. Kluge

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306 pp.

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Joseph Magnet, a law professor at the University of Ottawa, and Eike-Henner Kluge, a professor of philosophy at the University of Victoria, have taken a comprehensive look at the medical, legal and ethical problems surrounding the decision of whether or not to treat children born with severe physical and mental defects. The subject is a delicate one as it deals with issues which traditionally have remained unexplored, perhaps due to the moral and ethical problems which must be met.

Over the past twenty-five years, medical advances have made it possible to prolong the life of infants born prematurely or with severe abnormalities. The practice of neonatology—the medical care of the severely ill newborn child—has developed during that time and is now a firmly established medical specialty. These developments have succeeded in saving infants who today are living a normal life. Along with these advances, however, have come the problems which the authors address in this book.

The book is divided into five chapters: a description of neonatal practice in Canadian hospitals; the legal aspects of neonatal practice; an ethical analysis of euthanasia in the intensive care nursery; a policy proposal which would allow for active as well as passive euthanasia; and a proposal for controlling the process. Each chapter has extensive footnotes and the chapters are arranged in a logical sequence with sub-headings which are helpful for locating specific material. There is also a comprehensive bibliography.

The first chapter is a description of neonatal practice in Canadian hospitals and is based on a survey carried out by the authors in 1979-80. The survey was used to explore the practice of selectively treating grossly deformed infants and looked in particular at who made the decision to withhold treatment; what the process was in the decision making; and what interim care would be given to the infant when a decision to withhold treatment was made. The approach taken for the survey included the use of an investigative journalist who interviewed those involved in neonatal intensive care “to elicit reactions and responses that would give the feel of actual intensive care practice.”¹ The authors drew from “the most promising interviews”² and selectively reproduced transcript excerpts to illustrate or to buttress a point. Unfortunately, there is no information about the number of different centres that participated in the survey, the source of the transcript excerpts or whether these excerpts are generally indicative of the

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1. J.E. Magnet and E.W. Kluge, *Withholding Treatment from Defective Newborn Children* (Cowansville: Brown Legal Publications Inc., 1985) at 7.

2. *Ibid.* at 6.

views held by others who were interviewed. Because the authors make recommendations in later chapters based on these excerpts, it would have been preferable if a description of the respondents was included to allow the reader to determine the universality of the opinions expressed. The interviews revealed one major finding—all units surveyed practiced selective treatment and management of “defective” newborns. There was consensus on six other “ethical dilemmas” which are the subject of a legal and ethical analysis in subsequent chapters. Again, it is impossible for the reader to determine whether these dilemmas represent widespread concerns since the basis for the consensus is the selected interviews and the reader has no information on how representative these interviews are of the total response.

The legal aspects of the care of severely handicapped infants are thoroughly reviewed. There is a comprehensive discussion of the statutory and common law as they relate to the decision-making authority, the decision-making process, the use of paramedical data in the evaluation of alternative treatment options and the interim care of infants who have had treatment withheld. The authors review the pertinent Canadian legislation and have extensively surveyed the case law in this country, the United States and Britain.

The third chapter entitled “Deliberate Death in the Intensive Care Nursery: An Ethical Analysis” addresses the issue directly. It “identifies the ethical parameters of neonatal practice; analyses these practices for conformity to the guiding ethical tenets of Anglo-American society; and sketches a model of ethically acceptable deliberate death . . .”³ The authors conclude that not only is it ethical to withhold treatment from those infants who have no hope of enjoying an acceptable quality of life, but in some cases there may be an obligation to bring death about. The authors argue from ethical principles that there is no difference between active and passive euthanasia as a means of terminating the infant’s life. This point of view is necessary to lay the foundation for the proposals which follow.

The fourth chapter also has a riveting title: “Giving the Hemlock: A Policy Proposal”. It describes criteria for deciding on death, identifying those who will make the final decision, and the manner in which death should occur. The authors advocate legalization of euthanasia, both active and passive, through an amendment to section 197 of the Criminal Code (the duty to provide necessities of life) which would protect the parent and the health-care practitioners and would allow the physician to determine which measures would be most appropriate.

The final chapter deals with the most appropriate means of regulating medical practice in the intensive care nursery. The authors recommend a system of review and approval which would include a medical advisory committee within the hospital and a provincial standards review board. Such a system would ensure that the practices which the authors have

3. *Ibid.* at 143.

identified as "tainted"⁴ would be eliminated and the appropriate decision-making process would be set up in each neonatal intensive care unit in the province.

The authors have identified four goals of legal regulation from their survey: the improvement of neonatal medicine, the societal review and supervision of a self-regulating monopoly, the correction of perceived abuses and the containing of costs.⁵ It is questionable, given the limited information regarding the scope, breadth and depth of the interviews, whether the authors are justified in recommending such a sweeping reform of the practice of neonatal medicine.

The authors have identified and analyzed the legal and ethical issues which exist in the practice of neonatology. Throughout the book they recognize that their views will not be universally approved but they meet much of the anticipated criticism in a forthright manner and deal with the counter-arguments from their firmly held perspective. They are somewhat insensitive in their use of terms such as "defective," "vegetable" and "salvageable" to describe newborn infants with severe handicaps. The book would be improved by including a glossary of terms for the reader who is unfamiliar with medical terminology. However, whether one agrees with the authors' views or not, this book is a welcome addition to the sparse library of Canadian works on contemporary legal-bioethical problems.

4. *Ibid.* at 238.

5. *Ibid.*

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