

On the Right to Refuse Treatment: After the Enactment of Patient Right to Autonomy Act

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Abstract

The Patient Right to Autonomy Act (the Act), enacted in 2016 and put into force in 2019, is the first statute in Taiwan formally acknowledging the value of patient autonomy. Nevertheless, the Act paradoxically limits the right to refuse life-maintaining treatment to five categories of patients. Do competent patients have a legal right to refuse any kind of treatment despite the types or stages of their diseases? Is it, as Sun Hsiao-Chih claimed, justifiable to separate the right to refuse treatment to general refusal from special refusal (the refusal of life-maintaining treatment)? This article argues against the separation theory by providing clinical narratives and comparative legal studies. The author further uses the case of Jehovah's Witness patient refusing blood transfusion to explain the correct and appropriate interpretation of the "no justification" in article 7 of the Act.

The paper contests again that patient's right to refuse treatment, based on the Constitutional right to body integrity, should not and does not have to be broken into general refusal and special refusal. A competent and informed patient's wish to withhold or withdraw certain treatment, even the life-maintaining treatment, does not necessarily bring about immediate death and should not be viewed as committing suicide. Rather, the refusal implies the acceptance of death as a complication of patient's choice. Understating the ethical difference between Nature-Death (with moral consensus) and Dignity-Death (with moral

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controversies), the paper clarifies that the Act is by nature a facilitation-legislation in the field of nature-death, not a privilege-legislation in the field of dignity-death. Therefore, this paper concludes that (1) all the procedural requirements in the Act (art. 9 and art. 14) should not be seen compulsory and exclusive but instrumental for convenience reason; and (2) as long as there is “clear and convincing” evidence to show that a refusal meets the patient’s sincere and real wish, with no disagreement between physicians and families, it constitutes the “justification” of art. 7 for physicians to withhold or withdraw life-maintaining treatment, and accordingly all the action/inaction resulted from should not be held legally liable.

Keywords: Patient Right to Autonomy Act, Right to Refuse Treatment, Incompetent Patient, Advance Directives, Jehovah’s Witness, U.S.A., German, Taiwan