Applying The Child Abuse Amendments Of 1984 To Actual Cases

Part II

Last month, this publication carried an introductory article on the Child Abuse Amendments of 1984. As a preliminary to applying this legislation to actual cases, a brief summary of the amendments may be helpful. The legislation requires that medically-indicated treatment to infants in life-threatening conditions must be provided in all cases except the following:

1) When the infant is chronically and irreversibly comatose;
2) When providing such treatment would (a) merely prolong dying, (b) not be effective in improving or correcting all of the infant's life-threatening conditions, or (c) otherwise be futile in terms of the survival of the infant;
3) The provision of the treatment would be virtually futile in terms of the survival of the infant so as to constitute, in effect, inhumane treatment.

In all cases (no exceptions), appropriate nutrition, hydration and medication must be administered.

Application to Infants Who are Born Dying

Infants who live but a few weeks or days after birth usually are infants who are born dying. Such was the case of Baby Stephanie Fae of Barstow, Cal., who was born on Oct. 12, 1984 (3 weeks premature) with an incurable condition known as hypoplastic heart syndrome. According to an interview with the mother of this infant as printed in the Dec. 3, 1984, issue of People magazine (p. 54), the physician told her that Baby Fae was dying, and “there was nothing they could do for her.” The fact that the distinguished Dr. Leonard F. Bailey and his colleagues at the Loma Linda (Cal.) hospital made medical history on Oct. 26, 1984, by implanting the heart of a healthy baboon in the chest cavity of the infant, only emphasizes the fact that she was a dying infant. This dramatic surgical intervention was ethically extraordinary and noncompulsory. In good conscience, the parents could have denied permission to proceed with the animal-heart transplant. Another group of infants who are considered as born dying are anencephalic infants; the brain is entirely or substantially absent. These infants usually die within a few hours or days after birth.

Application to “Gray Area” Cases

A third class of defective newborns could challenge the wisdom of a Solomon. Due to a variety of life-threatening conditions (often multiple), and due to the uncertainty as to the effectiveness of possible treatments, the recommendation of seeking the help of ethics committees or Infant Care Review Committees is amply justified. A prominent case in point is that of Baby Jane Doe of New York State. This infant was born on Oct. 11, 1981, with multiple birth defects including “spina bifida” of meningomyelocele (sometimes referred to as “open spine”) and a hydrocephalic condition (fluid on the brain). After adequate medical and spiritual consultation, the parents opted for conservative care of the infant (nutrition, hygiene, antibiotic treatment, etc.). They did not consider surgical repair of the spina bifida condition to be in the best interests of the infant at that time. A pro-life attorney, unrelated to the family, brought an action in state court seeking the appointment of a guardian for the infant so that the hospital could be directed to allow the surgery. The decision of the court in favor of the surgery was
reversed by an appellate court the following day. The decision of the parents was upheld as founded on responsible medical authority and as representing the best interests of Baby Jane Doe. That decision later was affirmed by the highest court of the State of New York.

This case illustrates the anguish of determining just what is to be considered as “in the best interests” of a defective newborn in each particular case. The facts of the case do not justify the inference that the parents refused consent to surgery initially because of the infant’s handicap (“quality of life” considerations), but rather because surgery at that initial period carried serious risks and promised few benefits for the infant. In hindsight, one expert was of the opinion that the surgical repair of the spina bifida condition when first recommended would have resulted in “a child with normal intelligence, capable of walking with braces outside of the home” (Linacre Quarterly, Nov., 1984, p. 322).

A portion of the court proceedings in the Baby Jane Doe case are reported in the Feb., 1985, issue of Linacre Quarterly (pp. 52-58). Despite press reports, media programs and court opinions which predicted that Baby Jane would be severely retarded, some experts predicted that the infant could have normal intelligence, probably needing some bracing for walking purposes. About two and one-half years after the infant’s birth (in March, 1984), the parents did consent to surgery for Baby Jane Doe. A shunt was installed to improve her hydrocephalic condition (draining the fluid from her brain) although her spinal lesion healed. She has even appeared on national T.V. with her parents. This case presents an occasion of interpreting the Child Abuse Amendments of 1984 as meaning that an infant with multiple life-threatening conditions must still be given treatment if one or the other of the corrective or remedial treatments could not be given until a later date. As in Baby Jane Doe’s case, there will be other defective newborns with life-threatening conditions (Multiple) for whom corrective treatments could be given only after the infant reached a certain age, or after another life-threatening condition had been corrected.

The viewpoint of attorneys Dennis J. Horan and Burke J. Balch in an article on “Infant Doe and Baby Jane Doe . . .” in the Feb., 1985, issue of Linacre Quarterly is worthy of thoughtful consideration:

“The picture which emerges of Baby Jane Doe is that, far from being a “hard case,” she is really one of the better cases in terms of prognosis for a high “quality of life”. Her saga illustrates the profound unreason that an openness to discrimination fosters: a willingness, even an eagerness, to believe the worst about a minority in order consciously or unconsciously to justify a denial of equal protection. History has taught over and over again how this willingness systematically leads to distortion in the view the majority holds of the minority and the acceptance of inaccuracies and stereotypes which in turn, reinforce the discriminatory attitude . . .” (p. 57)

The Child Abuse Amendments of 1984 constitute an affirmation of the dignity of life and of human worth for all members of the human race. One is tempted to add — “even” for tiny, defective newborns; but that “even” bears a discriminatory connotation. Those who come into this world with limitations in their “quality of life” potential have a special claim on those who have health without physical handicap — not because they are objects of pity or sympathy — but because they are equal in human dignity and human worth. They all reflect the dignity bestowed by the Creator when He said: “Let us make man in our image, after our likeness” (Gen. I, 26).

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