Hospital breached boy's human rights by treating him against his mother's wishes

Clare Dyer *legal correspondent, BMJ*

The human rights of a 12 year old boy with profound disabilities and his mother were violated when doctors overrode her wishes and gave him diamorphine, the European court of human rights ruled last week.

The unanimous ruling confirms that doctors cannot impose treatment on a child against a parent's wishes. If the parent refuses consent, the court's approval must be sought.

Carol Glass told doctors she wanted her son David, who was in St Mary's Hospital in Portsmouth in 1998 with a respiratory tract infection, to be resuscitated if his heart stopped. But doctors put a "Do not resuscitate" order in his medical notes without telling her.

Earlier in the year, he had spent 23 days on a ventilator, but this time doctors decided not to intervene but recommended diamorphine to ease his distress. His mother refused to believe he was dying and turned down the

diamorphine, fearing it would compromise his chances of recovery.

David was born with hydrocephalus, has spastic quadriplegia and severe learning disabilities, and is virtually blind. His mother asked to take him home if he was dying, but the police were called and told her she would be arrested if she tried to remove him. Doctors gave him a low dose of diamorphine, but a group of his relatives entered the ward, assaulted doctors, removed the tubes, and resuscitated him.

The court awarded David, who survived and is now 17, and his mother a total of £7000 (\$12 640; €10 300) in damages and £10 500 in costs—payable by the UK government—for a breach of article 8 of the European convention on human rights, the right to respect for private life.

The judges said: "The court considered that the decision to

Doctors gave diamorphine to David Glass (left) against the wishes of his mother Carol, pictured outside the High Court in 1999

impose treatment on David in defiance of his mother's objections gave rise to an interference with his right to respect for his private life, and in particular his right to physical integrity."

Mrs Glass sought a High Court declaration in 1999 that it would be unlawful in future for doctors to treat her son without her consent. But the High Court, and later the Court of Appeal, refused to grant a declaration covering a hypothetical situation.

However, Lord Woolf, then master of the rolls, said a court must be asked to decide when parents and doctors are in "grave"

conflict over a child's treatment.

The Strasbourg judges said they had not been persuaded that an emergency High Court application could not have been made. Instead the doctors and hospital officials used the limited time available to try to impose their views on Mrs Glass.

The family's solicitor, Richard Stein, said: "Except in lifesaving emergencies, this judgment confirms what we all thought the law was. If doctors want to override parents' wishes they have to go to court. We hope the few recalcitrant doctors who want to treat children against their parents' wishes will think again." □

Resectable pancreatic cancer needs surgery, then chemotherapy

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Adjuvant chemotherapy has a significant survival benefit in patients with resected pancreatic cancer, whereas treatment with chemoradiotherapy has a negative effect on survival, the results of a new study, in the *New England Journal of Medicine*, show. The negative effect of chemoradiotherapy was thought to be due to the fact that it delayed the administration of chemotherapy.

Pancreatic cancer, with an overall five year survival rate ranging from 0.4% to 4%, has a poor prognosis and is one of the top 10 causes of death from cancer in the Western world. Previous studies have shown that surgical resection

improves survival, but only about 10% of patients with pancreatic cancer are eligible for the procedure, often because their disease has progressed too far.

Adjuvant chemotherapy may improve long term survival, but its routine use is not universal because the results of randomised trials have been inconclusive. A previous study, the GITSG (Gastrointestinal Tumor Study Group) trial, randomly assigned 43 patients to receive surgery alone or surgery plus chemoradiotherapy followed by maintenance chemotherapy. The median survival was significantly longer in the "adjuvant treatment" group than in the surgery group (20 months *v* 11 months), with five year survival estimates of 18% and 8% respectively (*Cancer* 1987;59:2006-10).

But three subsequent randomised studies failed to confirm the benefit of adjuvant treatment. Moreover, it is unclear whether the survival advantage in the GITSG trial was due to the combination of

chemoradiotherapy and maintenance chemotherapy or to only one of these treatments alone.

In the new study, the European Study Group for Pancreatic Cancer (ESPAC) undertook a large, multicentre trial to compare the benefits of adjuvant chemoradiotherapy and maintenance chemotherapy alone in patients with pancreatic cancer (*New England Journal of Medicine* 2004;350:1200-10).

The researchers, led by Dr John Neoptolemos of the department of surgery, Liverpool University, randomly assigned 289 patients with resected pancreatic ductal adenocarcinoma to three different treatment regimes and one group to observation. Seventy three patients were treated with chemoradiotherapy alone (20 Gy over a two week period plus fluorouracil), 75 patients with chemotherapy alone (fluorouracil), and 72 patients with both chemoradiotherapy and chemotherapy. Sixty nine patients were observed.

The analysis was based on

237 deaths (82%) among the 289 patients and a median follow up of 47 months. The estimated five year survival rate was 10% among patients receiving chemoradiotherapy and 20% among patients who did not receive chemoradiotherapy ($P=0.05$). The five year survival rate was 21% among patients who received chemotherapy and 8% among patients who did not receive chemotherapy ($P=0.009$). The benefit of chemotherapy persisted after adjustment for major prognostic factors.

"The simplest explanation for these observations is that chemoradiotherapy delayed the administration of chemotherapy and consequently reduced the potential benefit of chemotherapy that is derived from delivering it as soon as possible after resection," the authors wrote. "We conclude that standard care for patients with resectable pancreatic cancer should consist of curative surgery followed by adjuvant systemic chemotherapy." □