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# TO LIVE AND LET DIE. WITHHOLDING AND WITHDRAWING LIFE SUSTAINING TREATMENT IN ARGENTINA: FROM THERAPEUTIC TO JUDICIAL OBSTINACY

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# **A MAN'S LAST POWER OR RIGHT IS TO SAY NO**

Jean Paul Sartre

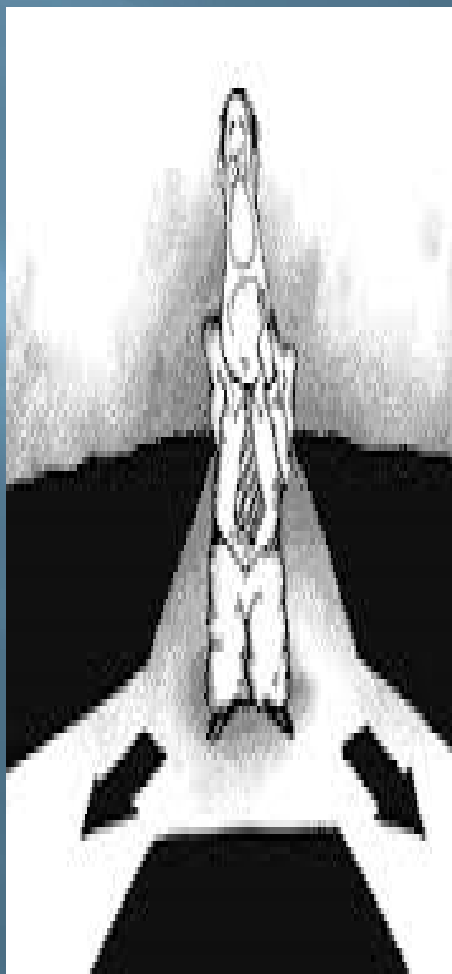






# Argentine Legal Framework

- ▣ Art. 19 CN
- ▣ Art. 2 and 5. National Patients' Rights Act (26742, Death with Dignity Act)
- ▣ Art. 59 National Civil Code.













# M.D. Leading Case

- ▣ From 1994 PVS
- ▣ 2009: petition to withdraw ANH was dismissed
  - Highlights:
    - ▣ Protocols EOL SAP SATI
    - ▣ No federal legislation
    - ▣ Provincial Death with Dignity Act 2211/08
    - ▣ In the judicial file:
      - expert statement of the Forensic National Bureau
      - 3 rulings from Bioethics Committee
        - Committee from the Health Provincial Department
        - Committee SATI
        - Committee INCUCAI

# M.D. (cont.)

- Main arguments:
  - Life is the first and most fundamental right
  - MD is not a terminal patient nor is he in agony
  - “in the future science can find new treatments that could help him get better”
  - “the patient is not suffering. Only his family is suffering”.
  - “To withdraw artificial nutrition and hydration is a death sentence”.
  - “MD’s autonomy is not respected because he didn’t express his wishes before and this is what his family wants but don’t know if he will agree with them”.



# M.D. (cont.)

- 2011: appeal was dismissed. Sentence confirmed.
- 2013: Local Supreme Court revoked and accepts to withdraw ANH
  - Death with Dignity Act 26742
- Legal appointed guardian appeals to the Supreme Court
  - Arguments
    - He is not a terminal patient
    - He didn't express his will
    - **“to accept that decision is to leave in the hands of the family a decision without the possibility of judicial revision”**
- 2015 Supreme Court
  - Withdrawing of life sustaining treatment
- 15 legal professionals: 11 against - 4 in favor

# Why Do We Do It?

- ▣ End of Life Issues in Paediatrics
- ▣ Technological Development in Medical Sciences
- ▣ Medical Decision Making Process
  - Uncertainty
  - Therapeutic Obstinacy
  - Vulnerability
    - ▣ Autonomy in Paediatrics
- ▣ Does Law has something to say about it?
  - Fear of Liability
- ▣ Who decides what is the best interest of a child?

# What Do We Do?

- ▣ Semiorganized survey
- ▣ Judicial Personnel
  - Criminal Courts
  - Civil (Family) Courts
  - Forensics
- ▣ 3 typical medical situations at end of life in Paediatrics
  - No chance situation
  - Unbearable situation
  - Permanent Vegetative State



# What Do We Do? (cont.)

- ▣ Questions:
  - In these 3 scenarios:
    - ▣ Do you share, in general, our decisions?
    - ▣ Do you share, in particular, withholding or withdrawing life sustaining treatment?
    - ▣ Do you agree with withdrawing artificial nutrition and hydration?
    - ▣ Would you decide in a different way if it were an adult patient?
    - ▣ Do you think a child could decide by himself?
      - What if a child makes AMD?
    - ▣ Do you think is necessary to ask for court's warrant?
    - ▣ Does the medical decision in either of the 3 cases can be considered a crime?
      - If so, which one?
        - Homicide
        - Assisted Suicide
        - Abandonment of a person

# What do we want to know?

- ▣ Is it the same to “let die”, to “help to die” and to “cause someone’s death”
  - ▣ NO : 96,15 %
  - ▣ YES: 3,84 %
- ▣ From a medico-legal approach is it the same to withhold and to withdraw a treatment?
  - ▣ No: 73,07 %
  - ▣ Yes: 23,07 %
  - ▣ Don’t Know/Don’t Answer: 3,84 %

# FINDINGS

- ▣ 55% no crime in either of the 3 cases
- ▣ 25% 3 cases are crimes
- ▣ 12% a crime in some of the cases
- ▣ 8% a crime 2 of the 3 cases .
- ▣ There's a significant association between being a legal professional and the probability of finding some of the cases as a crime
- ▣ We found no association between religion (christian-jew, agnostic-atheist) and the understanding of the cases as a crime
- ▣ The vast majority who find the medical behavior to be criminal (73,91 %) stated to share decisions and to understand the medical situation from a human point of view, but insisted they were crimes from a legal approach



# FINDINGS (cont.)

- ▣ Fear of Liability vs Legal Claim
- ▣ 73.07 %: is not the same to withhold a treatment than to withdraw a treatment:
  - Both lawyers and medical doctors agree on the matter
  - This gives ground to the false belief that is different and less serious to don't act than to act
- ▣ 73,81 % agree to withdraw ventilation in 3 cases
- ▣ 65.31% disagree to withdraw ANH
- ▣ 63,40 % agree that cases must be dealt within the medical relation: Bioethics Committee
- ▣ Legal professionals are not familiar with the concepts the cases bring in.
- ▣ Legal professionals were only involved on foregoing life sustaining treatment situations in 5,88%.

# FINDINGS (cont.)

- ▣ 3,92% confuse foregoing life sustaining treatment cases with organ transplantation and identify brain death with PVS
- ▣ 47,06% identify foregoing life sustaining treatment with euthanasia. In order: case 2 (23%), case 3 (19,6%), case 1 (8%).
- ▣ Women were more prone to feel empathy in each case.
  - Maternal role
  - Ethics of Care
    - ▣ Emotions and feelings
    - ▣ Feminine approach to illness and dying
- ▣ Those who don't agree in general with decisions in either of the 3 cases consider that a courts warrant has no use as it would be understood as a "license to kill".
- ▣ 63.4 % there's no need for court's warrant to forego life sustaining treatment.
- ▣ *Off the record:* not only doctors would be found guilty of a criminal offence but also parents as well

# FINDINGS (cont.)

- ▣ Crime
  - Homicide
    - ▣ Murder
    - ▣ Felonious Homicide
  - Abandonment of a person
  - Assisted Suicide
  - Crime vs. No Crime
- ▣ 88,23% think is necessary to find a legal justifiable cause or an exclusion of legal responsibility
  - Violent emotion
  - Legal Justifiable cause : Informed Consent
  - Exclusion of legal responsibility: extenuating circumstance











*with thank you*

NANCY BETH CRUZAN  
MOST LOVED  
DAUGHTER — SISTER — AUNT

BORN JULY 20, 1957  
DEPARTED JAN. 11, 1983  
AT PEACE DEC. 26, 1990



# IN THE VALLEY OF SORROW, SPREAD YOUR WINGS

SUSAN SONTAG

# THANK YOU!!!!!!!

