The Newborn Infant Protection Act secures the rights of newborn children by prohibiting their intentional starvation, dehydration, or asphyxiation. Louisiana is the first state to enact this Legislation which declares that no infant born alive shall be denied food, nutrients, water and oxygen “by any person whomsoever with the intent to cause or allow the death of the child for any reason.”

Summary

In April 1982, “Baby Doe” was starved to death in a hospital in Bloomington, Indiana. The death was sanctioned by the infant’s parents, his physician, and the state judicial system. Despite offers to adopt the child, “Baby Doe” was purposely allowed to die by those who normally would be his protectors. His crime? He was not perfect. He was born with Down’s syndrome, a handicap that in most cases results in mild or moderate retardation.

A month later, the Maryland Board of Veterinary Examiners fined a veterinarian $3000 dollars, suspended his license 60 days, and placed him on probation for six months. The Board ruled that the doctor had starved a dog to death. Unlike “Baby Doe’s,” the dog’s life was properly deemed to have had value.

While highly publicized, the Bloomington case is part of a practice of infant starvation or surgical care for newborn children a reality in our hospitals, the medical or surgical treatment is administered without the parent’s consent. Both hospitals and physicians are protected against liability by the measure when there is no hope for recovery. Moreover, the Act does not require extra lifesaving medical or surgical care for a child in a continual comatose condition when the physician determines the child’s parents or physician are not prevented from ending the use of artificial life-support systems for a child in a continual comatose condition when the physician determines there is no hope for recovery. Moreover, the Act does not require extra lifesaving medical or surgical care for a child when the risks far outweigh the advantages of such methods.

In the Bloomington case, “meaningful humanhood” apparently did not include retardation. Those entrusted with the life of “Baby Doe” prescribed starvation because of death was seen as preferable to life with a handicap; death was a “management choice.” The person with the greatest stake in this “choice,” however, was too young to offer an opinion, much less defend himself.

The legislation generally prohibits the deprivation of necessary medical or surgical care by parent, physician, or any other person when such medical attention is essentially to save the life of the child. The Act does not uniformly mandate costly medical care, however. A child’s parents or physician are not prevented from ending the use of artificial life-support systems for a child in a continual comatose condition when the physician determines there is no hope for recovery. Moreover, the Act does not require extra lifesaving medical or surgical care for a child in a continual comatose condition when the physician determines there is no hope for recovery. Moreover, the Act does not require extra lifesaving medical or surgical care for a child when the risks far outweigh the advantages of such methods. Both hospitals and physicians are protected against liability by the measure when medical or surgical treatment is administrated without the parent’s consent.

With the practice of selective care for newborn children a reality in our hospitals, the rights of our most defenseless citizens must be clearly stated. The Newborn Infant Protection Act is such a statement, as well as an affirmation of the inherent value of every human life.

Model Legislation

{Title, enacting clause, etc}
Section 4. (Parental consent to care and treatment; refusal)

(A) Whenever the parent or parents of a child refuse to consent to the care and treatment of the child protected by this Act they shall at all times be free to execute a voluntary act of surrender of the child pursuant to [State Adoption code section], placing the child in custody of the [name of State department] or other licensed adoption agency. All medical expenses incurred by the [name of State department] on behalf of the child shall be reimbursed by the parent or parents of the child, provided they have not been declared financially needy. No medical insurer of the parent or parents of a child who would have otherwise been liable for such medical expenses may deny liability to their insured solely because of the parent or parents desire to withhold medical or surgical treatment from the child. The agency shall immediately provide the treatment for the child and shall make every effort to find an adoptive home for the child.

(B) Whenever the parents of a child protected by this Act refuses to consent to the care and treatment for the child, but refuses to surrender the child for adoption, the physician, or other persons included in the provisions of [code section] shall report the child as a neglected child or child in need of care to the local child protection agency or to the police.

(C) No physician, hospital, or other person authorized by law to provide medical or surgical care shall be held liable for providing medical or surgical care for a child protected by this Act without the consent of the child’s parent or the agency having custody of the child, when in the opinion of the physician, hospital, or other person authorized by law to provide medical or surgical care, exercising competent medical judgment, the child’s life would be threatened by delaying the provision of the care or treatment.

Section 5.

(A) Judicial proceedings to enforce the provisions of this Part may be instituted by any agency, institution, or person interested in the child’s welfare in the juvenile court in the jurisdiction where the child is found. All such proceedings shall be heard in confidence without delay, including the holding of special sessions of court. Any appeal or application for writs in any appellate court in cases arising from this Section shall be heard and decided in the shortest possible time. An attorney shall be appointed to represent the child in all trial and appellate proceedings.

(B) Nothing in this Part shall diminish the application of the [State criminal code] where appropriate.

Section 6. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions, items, or applications of this Act that can be given effect without the invalid provisions, items, or applications, and to this end, the provisions of this Act are hereby declared severable.

Section 7. All laws or parts of laws in conflict herewith are hereby repealed.

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