

Doctor who prescribes lethal drugs to dying patients 'not a risk to public'



By Julia Medew

A Melbourne doctor who has given scores of sick people a lethal drug has won a fight against the medical board, with a tribunal ruling his practise is consistent with other forms of palliative care.

In an extraordinary decision that could set a precedent for other doctors wanting to help patients die, the Victorian Civil and Administrative Tribunal has ruled Dr Rodney Syme does not pose a risk to the public, even though he has given about 170 people a drug that they used to end their own lives.



Dr Rodney Syme (left) and Bernard Erica, who is dying of cancer. Photo: Penny Stephens

In January, the Medical Board of Australia took urgent action against Dr Syme after it was told he was planning to give Nembutal to Bernard Erica, a 71-year-old Brighton man who was dying of tongue and lung cancer. Mr Erica had sought Dr Syme's help because he wanted to die at home and have control over his own death.

Upon learning of this, the board ordered Dr Syme not to "engage in the provision of any form of medical care, or any professional conduct in his capacity as a medical practitioner that has the primary purpose of ending a person's life".

The order was made on the basis that Dr Syme, an 81-year-old urologist and vice-president of Dying with Dignity, posed a serious risk to people, including Mr Erica.

But Dr Syme challenged this in VCAT last month, arguing that his provision of Nembutal to people with intolerable suffering was not done with the primary intention of ending their life, but rather to relieve suffering and to give people control over their death.

His lawyers argued that this was consistent with the doctrine of "double effect" in medicine which permits doctors to administer drugs or other treatments to relieve symptoms even if there is a secondary consequence of hastening death.

Dr Syme told the tribunal he had counselled about 1700 people with terminal illnesses or intolerable suffering over many years, and had provided about 10 per cent of them with Nembutal. He estimated about 40 per cent of them actually took the drug to end their life, and that all of them benefited from knowing they had the option.



Dr Rodney Syme is vice-president of Dying with Dignity. Photo: Simon Schluter

Two palliative care specialists backed Dr Syme in the hearing, indicating that it was only their understanding of current law that kept them from doing what Dr Syme does. One said that if it was legal to prescribe Nembutal, a drug used to put animals down, he would do so for some people.

After hearing evidence from Dr Syme, Mr Erica, and the two palliative care experts, the tribunal ruled that Dr Syme's intentions were consistent with the Australian Medical Association's advice to doctors that all patients have a right to receive relief from pain and suffering even where that may shorten their life.

It also said that Dr Syme's provision of Nembutal to patients he deems to be rational was analogous to the process of terminal sedation where a mixture of opioids and sedatives are used at the end of life. This is sometimes done by palliative care doctors and is not considered to be physician assisted death or euthanasia.

The tribunal said it accepted Dr Syme's "frank and comprehensive evidence" and said he demonstrated extensive and relevant experience and expertise in

counselling terminally ill patients; was relevantly informed about palliative care; and knew when to refer people to psychiatric care.

The tribunal accepted Dr Syme's evidence that when promising or actually providing Nembutal, his intention was not for the primary purpose of ending that person's life, and that if they do ingest it, it is a secondary consequence consistent with the double effect.

"In the tribunal's view, consistent with the opinions of both experts, the choice of a rational patient who elects to end their life rather than endure intolerable suffering and an uncertain death by means of other palliative care options, is not a death which can be described as harmful for the patient," it said.

"In the tribunal's view, on the evidence there is no basis to form a reasonable belief that Dr Syme poses a serious risk to persons."

It overturned the order on Dr Syme's medical registration. Dr Syme welcomed the finding and said it "completely vindicated" his work. He urged Victorian MPs to read the judgment ahead of a conscience vote on an assisted death law for Victoria due to take place next year.

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