

Children in Norway who have no right to medical treatment – do they exist?

Occasionally, doctors encounter patients in situations where professional ethics come into conflict with the law. Our Code of Ethics stipulates that we have a duty to protect the health of our patients and that we have a responsibility even if we deny care. Members of the Norwegian Medical Association are duty bound to comply with our Code of Ethics.

Children are vulnerable. They are dependent on their parents and the choices their parents make. Even though children have individual rights, the choices parents make will influence the children's possibilities of exercising their rights. This is particularly evident in the case of children whose parents are illegal immigrants. Healthcare personnel may find themselves in a situation where their own professional medical opinion and the needs of the child are weighed against immigration legislation, a situation exemplified in a casuistic article published in this issue of the Journal of the Norwegian Medical Association (1).

In 2011, the Regulation on prioritization was amended in order to clarify the rights of illegal (undocumented) immigrants to access health care services in Norway. This was continued in the Regulation on the right to health care and care services of persons without permanent residence in Norway (2). Norway has ratified the United Nations Convention on the Rights of the Child (3). Article 24 of the Convention lays down «the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health».

Paragraph 4 of the Regulation in question states: «Persons under 18 years of age who do not fulfil the conditions under paragraph (2) (which describes who has full rights), have, in addition to emergency health care as mentioned in paragraph (3), a right to necessary health care and care services from the municipal health authorities under the Patients' and Users' Rights Act, section 2-1 (a), second paragraph, and necessary health care from the specialist health services under section 2-1 (b), second paragraph, first sentence of the Act, unless the best interests of the child indicate that health care shall not be provided» (2).

It is worth noting that the draft regulation stated: «... unless special circumstances indicate, following specific evaluation, that the health care shall not be provided» (4). The consultation document for the Regulation on prioritization states that since the

child is in the country unlawfully and is thus expected to leave within a short time, it does not have the right to treatments that cannot be deferred without particular consequences. Further: «Special discretion shall be exercised with regard to initiating

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treatment that will require long-term follow-up. Such treatment shall only be initiated if it is considered medically necessary to commence it rapidly» (4).

Alnæs-Katjavivi & Lie's article illustrates this problem (1). The child in question was born with anal atresia. The child was given a colostomy, and final surgical treatment was envisaged with subsequent closure of the colostomy. However, the hospital changed its treatment plan because the child was to be deported.

The Norwegian Medical Association revised its policy document on illegal immigrants in 2013 (5). The Association declares in the policy document that the right to health services must originate from the medical needs of the individual and of our international obligations, not out of the need to regulate immigration. The policy document also pointed out that illegal immigrant children are a particularly

exposed group who are greatly hindered from receiving necessary health care because of their parents' fear of being discovered by the authorities.

The UN Convention on the Rights of the Child applies to all children, and under the Convention States Parties are bound to ensure that children do not suffer any form of discrimination (5). The Norwegian Medical Association is clear in its consultation document that the provision in the Regulation involves discrimination against illegal immigrant children (6). These children have landed through no fault of their own in the situation they are in. It is problematic that healthcare personnel should find themselves in a conflict situation where extraneous interests appear to weigh more heavily than the purely medical assessment of the need for treatment. Regine Karlsen has undertaken a thorough legal review of this topic (7).

Quite specifically, the case referred to in the Journal of the Norwegian Medical Association saw the law and the professional ethics of doctors ranged against one another. The NMA Code of Ethics, Chapter I, paragraph 1 states: «A doctor shall protect the health of human individuals. The doctor shall heal, alleviate and comfort. The doctor shall help the sick to regain their health and the healthy to retain their health.» And in paragraph 6: «A doctor may decline to treat a patient, provided that the patient has reasonable access to obtain care from another doctor.»

All the members of the Norwegian Medical Association are bound by the NMA Code of Ethics.

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