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Ministry of Social Affairs and Health  
Registry

Subject

**VIEWS OF ETENE ON THE MEMORANDUM OF THE PROJECT GROUP  
EXAMINING THE NEED TO REVISE § 6 OF THE PATIENT ACT**

The Ministry of Social Affairs and Health has requested an opinion from the National Advisory Board on Health Care Ethics (ETENE) on the memorandum of the project group examining the need to revise § 6 of the Patient Act and the amendment to the Patient Act in this memorandum. ETENE discussed the matter at its meeting of 17 September 2003 and states the following:

In its publication “Ethical issues related to death in health care” (ETENE Publications No. 4), ETENE considers it important that the Patient Act be clarified in relation to patients’ treatment wishes. ETENE has stated that the amendment made to § 6 of the Patient Act in 1999 has made assessment of the significance and extent of patients’ treatment wishes more difficult. It is therefore encouraging that a detailed memorandum has been prepared about this matter with the aim of addressing this shortcoming in the knowledge that not all situations can be foreseen or controlled purely by judicial means. The Secretary General of ETENE was a member of the working group, which has thus had connecting points to the general policies and previous opinions of ETENE.

Reasonable grounds have been presented for the policy and proposals of the working group, and these are central from the viewpoint of treatment ethics. The attempt to have matters recorded in a sufficiently clear manner is of particular significance. It is also ethically sound to maintain the evaluation of the wishes and the best interests of the patient from viewpoints other than those of the persons providing the treatment.

It was considered important to include persons chosen by the patient in the group of people who can interpret the patient’s wishes in applicable situations. At the same time, it must be emphasised that the variability, surprises and unexpected nature of treatment situations introduce into decision-making an element that cannot be foreseen or fully controlled. The significance of professionalism, a safe treatment environment, and a humane, ethically high-standard of treatment must therefore be emphasised. If matters have been addressed beforehand, the likelihood of situations where treatment wishes have to be interpreted “from scratch” is considerably smaller.

Some parts of the proposed amendment to the Patient Act are still difficult to understand, and the proposals add to the volume of text. It should therefore be

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carefully considered what kind of changes the Convention on Human Rights and Biomedicine of the Council of Europe requires to be made to the original Finnish Patient Act.

Although the expression “important decision concerning treatment” in § 6 of the proposal is open for interpretation as such, the decisions requiring the express consent of the patient are described in the instructions concerning preliminary work. In the detailed grounds for the amendment, the form “*significant*” decision concerning treatment is used. The Advisory Board also discussed the difference between consent and mutual understanding, and decided that treatment occurring in mutual understanding means more than just consent. It expresses more continuous interaction and cooperation. The expression used in the proposal, “*firm and competent treatment wish*” is a new concept and raises the question of how such a firm and competent treatment wish can be expressed in practice.

The Advisory Board considered the expression “*other comparable reason*” in § 6 a to be problematic. According to the Advisory Board, this narrows the interpretation of when the patient should be treated based too much on someone else’s consent. The Advisory Board proposes that the current expression “*other reason*” be adhered to.

Otherwise, ETENE agrees with the main policies and practical proposals of the working group’s memorandum.

Helsinki, 22 September 2003

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