Balancing medication with free choice

The case of Starson v. Swayze

by Faith Hayman LL.B.

One of the foundations of our democratic society is the right to decide what happens to our bodies. In medicine, there is a legal doctrine of informed consent that says doctors cannot treat a patient unless and until they first explain the purpose of the proposed treatment, what is involved, and any special risks of treatment; then the patient has the opportunity to give his/her consent.

But what happens if the patient is suffering from a mental illness? At what point is it reasonable for doctors to decide to force treatment because a patient does not understand or accept his/her mental illness, or the consequences of taking or refusing treatment?

In the recent movie *A Beautiful Mind*, Hollywood explored the intriguing case of John Nash, a brilliant, but highly-disturbed physicist who won a Nobel prize in mathematics. In a real life Canadian case, we are presented with the difficult dilemma of deciding treatment issues for someone with very high intelligence, who also suffers from severe loss of judgment.

The case of Starson v. Swayze involves a highly intelligent physicist (whose real name is Scott Jeffery Schutzman, but who wanted to be called Professor Starson). He had already earned a high reputation in the field of physics in his youth. Unfortunately, Starson also developed a mental illness, diagnosed as bipolar disorder. As early as 1985, he had found himself in hospital because of this illness. He was treated, with medication, with some success.

In 1998, Professor Starson made death threats to two tenants in his apartment building and was charged criminally. He was found not responsible for his actions because of his mental illness, and was confined to hospital. The evidence was that while at hospital, Starson planned to run the Starson Corporation from inside his inpatient unit, and insisted that he was on the leading edge of building a starship. He believed he could communicate with extra-terrestrials.

Starson’s doctors recommended that he take medications, including neuroleptic medication, mood stabilizers, anti-anxiety medication and anti-Parkinsonian medication. They believed that without this treatment, his condition would likely deteriorate.

But Starson refused, claiming that the medications dulled his brain and prevented him from working as a physicist. He believed that the side effects of the medications made him normal, which was a fate worse than death. He valued his creativity more than anything else and absolutely did not want to lose what he considered to be what defined him as a person—a brilliant mind.

Facing a 12-month hospital detention order under the *Criminal Code*, and fearing that he would be forced to take medication against his will, Starson applied to the Ontario Consent and Capacity Board for a determination that he was capable of making health decisions on his own.

The Board was made up of a doctor, a lawyer and a community member. They heard evidence from Starson, two of his treating psychiatrists and his solicitor. They also read letters written by Starson’s friends and acquaintances affirming their belief in his mental capacity. The legislation guiding the Board was Section 4 of the Ontario *Health Care Consent Act* which states:

1. A person is capable with respect to a treatment, admission to a care facility or a personal assistance service if the person is able to understand the information that is relevant to making a decision about the treatment…and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.
2. A person is presumed to be capable with respect to treatment, admission to a care facility and personal assistance services.

At all stages of the proceedings, everyone agreed that the Board should not decide what was in Starson’s best interests. It should only decide whether he was capable of making an informed decision; whether they agreed with that decision was irrelevant. After hearing all of the evidence, the Board concluded that Starson was not capable of deciding his treatment. The Board made the following findings:

• “clear and cogent evidence was presented that the patient is suffering from a chronic mental disorder, likely a bipolar disorder with psychotic features”;

• Professor Starson’s denial that he has any type of mental illness “is almost total”;

• without acknowledgement that he has some type of mental disorder and that his behaviour is being affected by that disorder, Professor Starson “cannot understand the information provided to him…. because he cannot relate it to his particular disorder”;

• Professor Starson “cannot understand the potential benefits of the medication” proposed and “seems unable to appreciate that efforts will be made to reduce the incidence of past side effects by using more benign medications”;

• “without some treatment, it is unlikely [Professor Starson] will ever return to his previous level of functioning; to the contrary, “the literature is clear that an untreated bipolar disorder is likely to result in further deterioration over time.”

In examining the findings of the Board, the majority held that while Starson seemed to deny his illness, it appeared that he may have denied the diagnosis, but was aware that he had symptoms and that his mind functioned differently. They considered this to be sufficient.

The majority also held that while Starson did not appear to appreciate the proposed treatment, he appeared to have the capacity to consider the treatment, and because he was never asked whether he understood the possibility that his condition could worsen without treatment, there was no evidence to conclude that he couldn’t consider this information if he had been told.

The minority decision, written by Chief Justice McLachlin, agreed with the Board.

What is interesting is that newspaper articles covering this case reported that Starson’s mother was devastated by the Supreme Court’s decision, as she was firmly convinced that her son desperately needed medication and that without it, he would languish in a psychiatric hospital. An article in the London Free Press noted that in an interview with a reporter following the Supreme Court ruling, Starson talked about his plan to marry Joan Rivers (whom he had never met), and confided: “Pope John Paul II works for me now.” The journalist noted that physically, Starson was unkempt and a number of his teeth were broken, but he refused to have them fixed. For the past year and a half, Mr. Starson had refused to see his mother, as he had decided that mothers are just containers that hold the embryo and that once the person is born, “they are of no use.”

This case poignantly addresses two competing values: an individual’s right to dignity and self autonomy on one hand, and on the other hand, the value of effective medical treatment for those who cannot access it on their own. It is hard to know what ultimately would be in Professor Starson’s best interest, but the struggle to balance these values remains a healthy and necessary one.

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dr. starson appealed, and five years later, his case was ultimately decided by the supreme court of canada.

In a 6-3 decision, the majority of the Supreme Court held that Starson was capable. The majority placed a very high value on a person’s right to autonomy. Mr. Justice Major, speaking for the majority, wrote: “The right to refuse unwanted medical treatment is fundamental to a person’s dignity and autonomy. This right is equally important in the context of treatment for mental illness…. Few medical procedures can be more intrusive than the forcible injection of powerful mind-altering drugs which are often accompanied by severe and sometimes irreversible adverse side effects.” Later in the judgment, the judge wrote: “The right knowingly to be foolish is not unimportant; the right to voluntarily assume risks is to be respected. The State has no business meddling with either. The dignity of the individual is at stake.”

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