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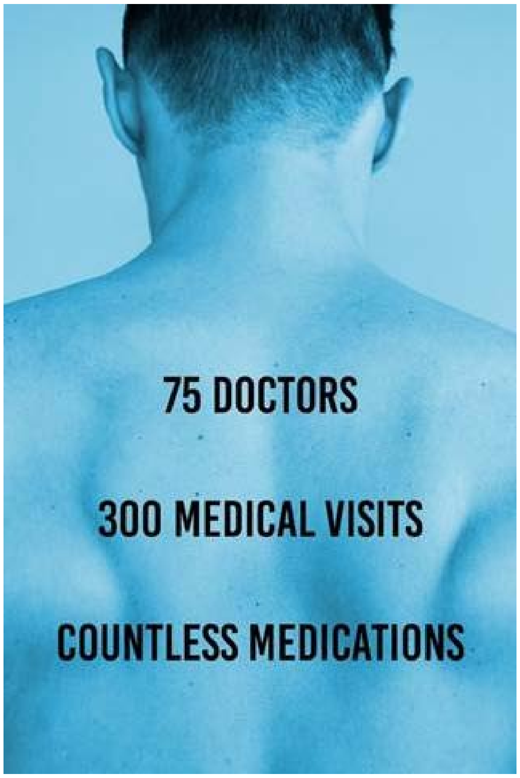

Medical Decision-Making Rights: The Case of Peter Brumlik

By Thomas F. Coleman

Peter Brumlik, a young man on the autism spectrum, is no stranger to health care providers. During his childhood, a family court judge gave Peter's mother authority over his medical care. He recalls that she took him to nearly 75 primary care doctors, specialists, dentists, psychiatrists, and psychologists. And he believes he had about 300 medical visits, just during the years 2017 through 2020.

In October 2020 – a few weeks before he was about to turn 18 – Peter got fed up with this revolving door approach to medical care. He was tired of ingesting a seemingly endless series of medications, many of which had side effects that made him feel like a stranger to himself. Peter went to his father's home on a scheduled visit and refused to return to his mother's residence as required by a longstanding family court order which gave her primary custody.

Peter's father supported his son's desire for autonomy since Peter would be an adult in a few weeks and would then have the legal right to medical self-determination. Peter had trusted adults in his life from whom he sought advice on any number of issues, including medical care. Peter's father viewed his son as a responsible person who should be allowed to experience the benefits and risks of adulthood. But his mother felt otherwise.

Two weeks before Peter would turn 18, she filed a petition in court to be appointed as his guardian. The petition alleged that Peter was unable to care for himself and lacked the capacity to make major life decisions. She wanted her authority to make medical decisions for him as a child to be extended indefinitely. The attorney who helped Peter in family court filed an objection to the guardianship as did Peter's father. This contested litigation has continued for nearly three years.

When Peter's attorney tried to convince him to accept the guardianship, Peter fired him and found another lawyer – someone who would advocate for his right to be free from parental control and to manage his own life, with support from trusted advisors of his choice. The new attorney demanded a jury trial and lined up a dozen witnesses to challenge the mother's claim that Peter was incapacitated and needed a guardian.

For several years, Peter has voluntarily been in therapy with a psychiatrist of his choice. Therapy has helped him deal with the stress of the guardianship proceeding as well as other personal and family issues. Since the time the guardianship petition was filed, Peter finished high school and is now attending college. He recently returned from a several week trip to India with his father.

Peter's new attorney helped him prepare legal documents to demonstrate that a guardianship is unnecessary. This includes a supported decision-making agreement with supporters to help him with decisions regarding finances, education, and medical care. It also includes a financial power of attorney and medical advance directive in the event Peter were to actually become incapacitated.

After a guardian ad litem (a court appointed specialist) declined to find that Peter is incapacitated, and in the face of overwhelming evidence of capacity developed by his attorney, Peter's mother caved in as the trial date approached. She withdrew the guardianship petition and requested a dismissal of the case.

Peter's hopes for immediate autonomy were dashed when the judge became his adversary and refused to unconditionally dismiss the case. Instead, she ordered that Peter continue physiological therapy and interrogations by the guardian ad litem every six months over the next two years. The guardian ad litem would have access to otherwise confidential therapy records and would submit reports to Peter's mother. All of this happened, despite the lack of a trial or any finding of incapacity. The judge totally disregarded Peter's constitutional and statutory rights to medical confidentiality and self-determination.

Peter approached Disability Rights New Jersey and they agreed to represent him on appeal. The judge who entered the order being appealed has since retired. A new judge agreed to put a hold on the previous order, recognizing that it likely will be overturned on appeal.

“The American Academy of Developmental Medicine and Dentistry joined with 10 other organizations to file a legal brief on appeal. ”

It asks the Appellate Division of the Superior Court of New Jersey to issue an opinion affirming the medical rights of adults with autism and other developmental disabilities who have not been declared incapacitated. The brief asks the court to make pronouncements about the value of supported decision-making as an alternative to guardianship. It emphasizes the need for judicial education on this topic, considering that when the issue was first brought to the attention of the trial court judge, she responded that she had never heard of supported decision-making.

Peter’s quest for personal autonomy and medical self-determination has not been without substantial costs. His special needs trust had a balance of $380,000 when the guardianship petition was filed. The fund has since been depleted by fees for attorneys, psychiatrists, and the guardian ad litem. Additionally, the ongoing stress of the proceeding – knowing that once they are put in a guardianship most adults never escape it – has taken a toll on Peter emotionally.

But Peter sees light at the end of the tunnel. He envisions a legal victory. He believes that, with support from his father and a network of others, a better future awaits him. When this legal nightmare is over, Peter plans to be an advocate for guardianship reform. In the meantime, Peter is continuing his studies at Raritan Valley Community College in North Branch, New Jersey.

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