

Change Of Heart

Good Healthcare For Those In Prison

If you or someone in your family is in need of a heart transplant, then you know they're not easy to get. Donor hearts are scarce and the procedure is expensive.

So, as *60 Minutes* first reported last December, when an elite transplant team at one of the finest hospitals in the country performed one on a prison inmate at a cost to taxpayers of roughly \$1 million, it raised lots of eyebrows and lots of questions.

Why did a prisoner get the heart? Prison officials in California say they had no choice in the matter. In fact, they believe the Supreme Court has, in effect, granted prisoners a constitutional right it has never granted to law-abiding citizens - the right to health care. **Correspondent Steve Kroft** reports.

The California prisoner got his heart transplant at Stanford University Medical Center, which has one of the finest transplant programs in the country. It was the first time ever a prisoner had gotten a new heart.

The California Department of Corrections won't release the name of the prisoner who received the heart transplant, citing regulations on medical confidentiality. It did say, however, that he is a 31-year-old inmate - a twice-convicted felon - serving a 14-year sentence for armed robbery.

His heart was irreparably damaged by a viral infection, and over the years his condition deteriorated to the point where his physicians decided he would die without a transplant.

He was put on a waiting list at the United Networks for Organ Sharing in Richmond, Va., where donor organs are matched to appropriate patients. The computer found a heart in January 2002, and doctors notified the prison system.

Steve Green, a California corrections official, says the state said, "Go ahead." He also says they didn't have a choice in the matter: "The administration at that time refused to give it to him. He sued. The U.S. District Court ruled that he was entitled to the transplant, and that he was also entitled to \$35,000 from the state because of the state's deliberate indifference. So we have direct court rulings saying that we will meet medical needs of our inmates. And we do."

By denying him a heart transplant, Green says it would have been deliberate indifference: "We think that's what the court would decide. The inmate would probably die, and his estate would sue us, and we'd lose."

And he's probably right. In 1976, the Supreme Court ruled that "deliberate indifference" to an inmate's medical needs is "cruel and unusual punishment," something specifically prohibited by the Eighth Amendment to the Constitution. It's an amendment that applies solely to people in custody.

"Inmates have a constitutional right that you and I don't have, Steve," says Green. "To health care."

This has surprised and angered a lot of people in California, and one of them was Los Angeles Times columnist Steve Lopez, who wrote about the situation.

"What is this telling people? What's the message here to the public," asks Lopez. "You know, you had two robbery convictions, you're in jail, you get sick, you're going to the top of the line, buddy. I mean, that's the problem here."

Lopez says it doesn't seem fair to people like his father, who has heart trouble, lives on a fixed income and at one point had his health insurance cancelled. The only way his father will ever get to Stanford, he says, is for a football game.

"When I wrote a column about my Dad, who I assumed was sitting there reading the paper going nuts, I suggested that he and my Mom get a couple of berets and do a Bonnie and Clyde act," says Lopez. "I mean, it might be the best way to get the best health care available. You know, knock off a few banks."

And maybe some other people are thinking about it too. There are seven million Californians who don't have health insurance and probably would not qualify for a transplant. They are, by definition, working poor who don't have health insurance with their jobs and can't afford to buy it on their own.

It's not unusual for hospitals to require hundreds of thousands of dollars up front before an uninsured qualifies for the list.

"I had this conversation with a woman who calls me and says my brother needs a heart transplant and he could not get on the list. And they said, 'Well, you're going to have to raise \$150,000.' And he says, 'Well, I don't have \$150,000.' They're practically having bake sales," says Lopez.

"Now here's a guy who works for a living and has three children. Why should he have to give up everything that he's worked for while somebody in prison is getting the best treatment available. It's not equitable."

Dr. Lawrence Schneiderman, a medical ethicist at the University of California at San Diego, says even getting onto the transplant list can be difficult. Hospitals set all kinds of medical criteria, including the ability to pay for expensive follow-up care.

"I think there are very few centers who would do that, unless you were special, they had a kind of endowment for teaching. But in general, don't count on it, no," he says.

But in this case, the prisoner's heart transplant was being paid for by the taxpayers. However, prison officials say if they hadn't given the inmate his million-dollar heart transplant, they would have been giving the armed robber a death sentence. But every day, 12 Americans die waiting for a transplant. And by giving the prisoner the heart, a death sentence was being passed to someone else - most likely someone who had never threatened anyone else's life with a gun.

Schneiderman says doctors can't take that into consideration. Medical ethics require physicians to give the organs to the patient who will benefit the most, regardless of their status in society.

But he believes that society, as a whole, can make its own decisions about social worth and could pass laws to do it.

"Now society may say, 'Look, in the case of a heart transplant, we don't have enough to go around. We have to make choices.' Then we, as a society, try to express our values through our choices," says Schneiderman.

So, basically doctors have to decide based on medical need, but society can decide who it thinks deserves a heart?

"Yeah. And that's, that's because we have such a hodgepodge of health care coverage, and not universal health care coverage, society has decided," says Schneiderman. "And so prisoners are, in fact, given what the rest of us in society deserve. But nobody has written that law. Nobody has made that Supreme Court determination."

Does Schneiderman think it's fine for society to say "No heart transplants for murderers?"

"I, personally, yes," he says.

What about heart transplants for robbers?

"Now we're starting on the slippery slope, you know. 'Well, then what about people who get a parking ticket,'" says Schneiderman.

But when doctors make the decision to not give the heart to the murderer but give it to the armed robber, are they playing God?

"When people say, 'You're playing God, you're rationing.' We're doing it right now. We're doing it often without thinking about it. And we're doing it in a way that when you step back and look at it, it really is hard to justify," says Schneiderman.

Corrections official Steve Green readily acknowledges that when it comes to transplants the uninsured may have to beg and borrow. But people who steal, or worse, already qualify.

He says that he would have approved this heart transplant if the person had been a murderer. They haven't faced the question of what would be decided if it were an inmate on death row. However, he says they have 600 people on death row right now.

If you walk around the exercise yard at the California Medical Facility in Vacaville, it's clear that prisoners are getting older and medically more needy.

Denton Johns is a diabetic with colon cancer: "I'm waiting for surgery right now. I'm supposed to be going out any time within the next two weeks to have a bowel resection done."

Does it surprise him that somebody received a heart transplant? "When I was at Salinas Valley, they did a \$160,000 quadruple bypass on me. And that kind of surprised me," he says. "But when they said it was \$1 million, that heart transplant, I said, 'They, they can definitely afford to do my cancer surgery then.'"

He admits that there's a bit of a controversy on the outside about the heart transplant: "They're saying, 'Oh, our tax dollars are going to pay for it.' We're in the care of the state. And the state has to take care of us and do what they can to keep us alive."

California will spend over \$900 million this year on medical care for its prisoners. And the cost is going up at a rate of 10 percent a year. And while no one pretends that prison medicine is the best, with procedures like transplants, it's becoming some of the most expensive.

And Green expects this is going to happen again: "Probably quite a bit in the future, because we have a very serious Hepatitis C problem in prisons nationwide. And the demand for liver transplants will be going up."

It's ethical dilemmas like that that Schneiderman deals with every day. What do you do if someone who's a hard-working, tax-paying American needs a heart transplant, and can't get it. But someone who takes a gun, robs a bank or a store can?

"Doesn't seem fair does it?" says Schneiderman. "What I would say to that hard-working person is don't blame the criminal. Don't blame the docs who are doing the heart transplant. Blame ourselves and our politicians who have made such a hodge-podge and patchwork of health care insurance in this country."

"When we look for the next name that the computer is going to spit out, and it comes up an inmate, I don't think it's a sin to say, to pause and to say, 'Okay, wait a minute. What is this guy's story and who is No. 2 on the list and what is his story,'" says Lopez.

"Yes, the ethics of it are complicated, but I personally don't think it's a sin to take a look at two lives, and to give a few points to the guy on the outside who is paying for his health insurance - who is caring for a family, who can be a productive tax-paying citizen ... just on the grounds of common sense."

In spite of the State of California's expenditures and the Stanford University Medical Center's expertise, the inmate transplant patient died last December 18. California corrections officials say he was "not a model transplant patient" and did not follow the strict medical rules laid out for transplant recipients.

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