Twitter, CANH, strange legal beliefs and ‘murder’

I annoyed Celia Kitzinger a few weeks ago, when I wrote in a tweet something like ‘the withholding or withdrawal of CANH (clinically-assisted nutrition and hydration) can be legal, or it can be murder’.

Now, I was astounded a few years ago, when I discovered that judges did not regard CANH as ‘a treatment’ - for me, the clue is that ‘clinically-assisted’ part of the description. Because our courts regarded CANH as being ‘somehow different from other medical treatments’, those courts were not, to use my phrase here, ‘simply applying the Mental Capacity Act to decisions which involved CANH’. Quite recently, our judges have changed their minds: they have decided that there was never a sound legal basis to describe CANH as anything other than a treatment for the purposes of the MCA – and it immediately and necessarily follows, that defensible best-interests decisions which would result in potentially-life-extending CANH being withheld or withdrawn can be made without applications for court rulings. We know this, because section 11 of the MCA is explicit, in stating that such best-interests decisions about life-sustaining treatments can be made by suitably-empowered [by the LPA which appointed the attorney] Welfare Attorneys.

There are some doctors who object to the MCA’s best-interests formulation of our law – typically these doctors will use the phrase ‘in the patient’s ‘so-called’ best interests’.

There are also some quite vociferous Tweeters, who state, effectively, that ‘all palliative care doctors are murderers’. When I wrote the tweet that annoyed Celia Kitzinger, it was those tweeters ‘who I has in mind’.

But: I’ve been pondering my ‘withholding of CANH could be murder’ assertion, and I am wondering what the precise legal situation is.

Suppose, that I had been abroad, and when I returned to the country I discovered that an elderly relative had died after an admission to hospital. The ‘facts’ which I would like to disentangle, are the following (and it is my scenario – these are to be taken as all true):

* My relative was old when in the hospital, but NOT suffering from any medical condition which would have led to death in the near future;

* A doctor, without consent from my relative (if capacitous) or without a defensibly-made best-interests decision (if incapacitous), decided to administer continuous heavy sedation to my relative: the effect of the sedation, was to make it impossible for my relative to eat and drink in the normal manner, and it also made it impossible for my relative to leave the hospital;

* The doctor, did NOT also administer CANH.

This is what I would like to get clear in my mind.

It is obvious, that the patient will inevitably die – with no food or hydration, you die. With food and hydration, the patient would have remained alive (I stated that as being the situation prior to the sedation).

So – if a loved-one of mine died in those circumstances, **then I would absolutely say** ‘my loved-one was murdered by the doctor’.

BUT: the sedation alone, wouldn’t kill the patient – the sedation, without ‘consent’, is what I would describe as ‘assault’. And, the failure to provide the CANH which would keep the sedated patient alive, is an **inaction** – but in this scenario, surely such an inaction is not appropriately described as mere ‘neglect’.

So – I’ll be pointing some of my ‘legally-clued-up’ contacts at this piece – my question is a simple one:

Would the doctor, be charged with murdering the patient?