

Surgeon's dilemma: should I save patient's life at any cost?

Dylemat chirurga: czy ratować pacjenta za wszelką cenę?

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Słowa kluczowe: transfuzja, świadek Jehowy, zgoda pacjenta.

Abstract

Every doctor practicing treatment in the field of medicine may be confronted with a serious question: should I save my patient's life at any cost? If a doctor resigns from emergency procedures, he/she will risk the patient's death. However, if he/she decides to proceed regardless of a Jehovah's Witness patient's statement of will, in which he or she refuses transfusion, he/she takes a risk of illegal medical intervention. There is neither an easy answer, nor a serious solution, thus the only way is to choose the lesser of two evils. Notwithstanding legal issues, there are still ethical problems, which result in an internal dilemma for a doctor.

Streszczenie

Każdy lekarz może stanąć w obliczu dylematu: czy powinienem próbować ratować pacjenta za wszelką cenę? Jeśli lekarz zrezygnuje z procedur medycznych wykonywanych w stanach nagłych z uwagi na przekonania religijne pacjenta, może ryzykować jego śmiercią i tym samym naraża swoje zobowiązania etyczne. Jeżeli jednak zdecyduje się kontynuować proces leczniczy obejmujący transfuzję krwi, niezależnie od tego, czy pacjent jest świadkiem Jehowy, który odmawia transfuzji, podejmuje ryzyko nielegalnej interwencji medycznej. W tego rodzaju przypadkach nie ma ani łatwej odpowiedzi, ani prostego rozwiązania, natomiast jedynym rozwiązaniem wydaje się wybór mniejszego zła. Niezależnie od aspektów prawnych, aktualne i istotne pozostają problemy etyczne, które wywołują u lekarza wewnętrzny konflikt.

Every person has the right to determine what shall be done with his or her own body. This means honouring religious beliefs, even beliefs that differ markedly from our own. The Jehovah's Witness (JW) who refuses blood can cause conflict for the physician. When it comes to lifesaving situations where transfusion is absolutely needed, a conflict arises between the doctor's professional duty to save lives and the right of autonomy of the patient to his/her body. The refusal of blood transfusion and blood products is becoming more common [1]. Do an individual's rights outweigh society's rights [2]? The aim of this article is to analyse the conflict of legal rights and confront the rights and obligations of each participant of the healthcare process.

Jehovah's Witnesses is a Christian religious movement established in the United States during the 1870s

[3]. Based on biblical doctrines, patients of the JW faith refuse allogeneic blood transfusion [4]. Jehovah's Witnesses take this to mean that blood that has left a body should not be transferred to others, neither via the mouth nor via blood-vessels. Accordingly, blood transfusions are prohibited, and those who have accepted a blood transfusion in order to perform a lifesaving operation could be expected to be expelled from the JW. Being expelled from the religious congregation might be very troublesome for the member, since he or she is shunned by the other members in order to keep the congregation free of immoral influence [5].

It is widely known that one of the most significant teachings of the JW church is abstinence from receiving blood transfusions. Believers derive this tenet from the Bible verse: "You are to abstain from ...blood".

From JW interpretation of certain Biblical passages, if they accept one drop of transfused blood, they have lost their chance for salvation. Thus, they are willing to accept death rather than blood or even blood derivatives such as plasma, fibrinogen, or even re-transfusion of their own blood [6].

According to article 34 of the Act on Medical Profession [7], each medical intervention either of an increased risk or a surgery requires the informed and written consent of the patient. Patient's informed consent shall be given by a person with full mental capacity, which means not only psychological condition determining effective consent but also the ability to recognise the consequences of their decision. Informed consent is a person's state of will. Patient's consent for each medical intervention must be given *ex ante*, before a physician commences the procedure. A consent given during the procedure as well as given after it has been performed (*ex post*) cannot be considered to be the correct [8]. The patient must accept the intervention in the applicable, lawful form [9]. His/her consent is not irrevocable – it can be effectively withdrawn before as well as during the intervention.

Therefore, according to Polish law, legally effective, exclusive consent may be given by an adult with full civil rights, on condition that he or she can recognise his/her behaviour [10]. The above-mentioned general rule includes exceptions, but for the purpose of this analysis, the authors shall consider such a general example. On the other hand, legally, any adult in full possession of his/her mental faculties has a perfect right to refuse any medical treatment, even if the refusal means death [11]. A doctor is obliged to cease the intervention at that time [12].

Lack of written consent when the patient is unconscious, in an emergency situation, can be solved by a court decision. However, if a patient has decided to refuse blood transfusion in the case of a medical intervention, the physician comes into conflict with his/her legal and ethical obligations [13]. A signed wallet card does not always withstand these requirements when an unanticipated medical emergency renders the JW unable to confirm the refusal. The medical, ethical, legal, and economic evidence cannot be ignored. Adult JWs have fought to protect their autonomy when making both contemporaneous and advance treatment refusal. The blood refusal card directs that no blood is to be given to the owner under any circumstance, even if physicians believe transfusion will be lifesaving [14]. The JW blood refusal card demonstrates the difficulty in applying legal reasoning to medical decision making.

Polish law does not regulate *pro futuro* declarations explicitly; however, for the doctrine it is obvious that a written, unquestionable state of will made in case of an emergency and loss of consciousness is binding [15]. In 2005 the Polish Supreme Court stipulated that

a *pro futuro* state of will, if explicit, unambiguous, and indisputable, commits a physician to restrain from a medical intervention [16]. The patient related to this Court decision was an adult woman who refused any kind of transfusion in the case of an emergency, even if it meant her death. Her declaration of will had a written form and there were no doubts that she had made such a declaration with full mental capacity.

The Court of the first instance did not take her state of will into consideration and legalised the transfusion. The Appellate Court discontinued proceedings, according to the fact that the medical intervention was made, the patient was dismissed from the hospital, and thus the decision of a court is useless. However, the Supreme Court granted the right to patient's autonomy, emphasising that its source can be found in the Polish Constitution.

In particular the Court stated that the patient's autonomy ought to be honoured irrespectively of his/her motives, thus a lack of consent for a particular intervention is binding. It eliminates a physician's civil and criminal liability, but in the case of a medical intervention it delegalises it. The judges also mentioned that the healthcare system and medical entities should be prepared for the alternatives in case such a conflict arises. A doctor may have a critical attitude but he/she is obliged to respect such a decision [17].

The information JW patients receive about the risks and benefits of blood may be misleading. Incorrect information may take away the patient's ability to make an informed choice. Decisions to withhold such care requires full information, reasoning, and free will. The "Request for No Blood" form has to be correctly signed by a patient. Furthermore, it is the clinician's duty to work with patients to restore them to a state of optimal health while respecting spiritual beliefs [18]. Informed reasons arising from religious belief or personal conviction are legally and ethically challenging and warrant special consideration [19].

With regard to religious values, if they are so deeply held that the patient insists on refusing transfusion, it seems ethically appropriate to try to convince him/her to accept a transfusion; however, there is no legal obligation to do so [20]. The doctor should not be passive but ought to act with due diligence to inform his/her patient about potential consequences of his/her refusal. It does need to be aimed to convince but rather to enable a deliberate decision to be taken [21].

The only situations where the society goes against a JW' wish to avoid a life-saving blood transfusion is when it concerns children who have not come of age. In such cases the court is called in and the children are taken care of. Parental and health care provider distress may be inevitable but could be minimised with early, clear, and consistent communication [22]. Parents sometimes deny their children blood trans-

fusions because of their religious beliefs. As regards children, many courts have handed down decisions stating that parents have no right to make martyrs of their offspring. In such cases, the child who must have blood is made a ward of the court, and permission for transfusion is then granted [23].

A court case in Japan upheld 'the patient's right to decision-making' as part of the patient's 'personal right'. When the patient is a mature minor, his or her wishes should also be respected. Even when the patient is a young child, all appropriate and available alternatives should be exhausted before considering a blood transfusion. This matter of treating the 'whole person' should be considered with all its related factors in mind [24].

If the patient states, "No blood", the patient him/herself has removed some of the physician's responsibility. Doctors are bound in their practice by codes of ethics as to their professional conduct [25]. In such cases medical actions must be led by a multidisciplinary approach with the coordination of all members of the bloodless medicine and surgery team such as surgeons, anaesthesiologists, pharmacists, nursing staff, and haematologists [26]. If the informed consent does not become invalid with time, the same happens to a flat refusal of certain medical interventions [27].

Persons with religious beliefs that conflict with mainstream medical practice create a tension for clinicians between honouring the different religious perspectives of the individual or carrying out what they believe to be their professional obligation. This is a patient presentation of an adolescent JW who refuses blood transfusions.

The major issue in this patient is the conflict among three values: (1) respect for religious beliefs, (2) respect for a competent person's right to refuse treatment, and (3) the ability of an adolescent to make good decisions for him/herself. Other dilemmas presented by this patient are the lack of a coordinated plan of care, the lack of communication with the patient and family, and the lack of attention to social factors that influence the patient's situation and his/her resulting care [28].

The refusal of blood products by JWs raises ethical and legal dilemmas that are not easily answered. For doctors, conflict occurs between the desire to respect patient autonomy and the need to provide good medical care. Despite a lively debate about how physicians should respond to patients' religious concerns, little is known about how physicians actually respond. There are ways explored in which physicians interpret and respond to conflict between medical recommendations and patients' religious commitments [29]. Surgeons face a special challenge in treating JW who refuse blood transfusion [30]. Nevertheless, JW are known to be "informed health care consumers. "No decision about me without me" in the context of Mul-

tidisciplinary Team (MDT) models of care requires further consideration.

Methods for ensuring that patients are actively integrated into the MDT processes are required to ensure patients have an informed choice regarding engagement, and to ensure recommendations are based on the best available patient-based and clinical evidence [31]. The negative right to abstain from treatment is today considered as a reasonably uncontroversial implication of the right to respect for autonomy [32]. Thus, each doctor is obliged to respect the patient's autonomy and act with respect to his/her free will, even if it means letting him/her die.

Conflict of interest

The authors declare no conflict of interest.

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