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\*Małgorzata Cyrych

# Jehovah's Witnesses, blood transfusions and judicial decision

## Świadkowie Jehowy, przetaczanie krwi a orzecznictwo sądowe

Varna Free University, Varna, Bulgaria

### Keywords

legal aspects, blood transfusion, Jehovah's Witness, consent, religion

### Słowa kluczowe

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### Address:

\*Małgorzata Cyrych  
Varna Free University, Varna, Bulgaria  
src.emergency@gmail.com

### Summary

Every patient has the right and capacity to decide on accepting medical treatment, even if a refusal might risk permanent injury to his/her health or even lead to premature death, and regardless of whether the reasons for the refusal were rational or irrational, unknown or even non-existent, if a patient's capacity to make a decision had been overborne by the undue influence of others, it is the duty of the doctors to treat her/him in whatever way they considered, in the exercise of their clinical judgement, to be in his best interests. The dangerous practice of denial of therapy for various religious reasons affects almost all religious sects and, to a small extent, other religious groups. Jehovah's Witnesses believe that accepting foreign blood blocks the way to salvation. They only agree to provide a medical service with the use of non-blood products. Therefore, treatment of such a patient can be extremely difficult for doctors. In other words, the arise is whether the rights of a mother refusing to have treatment can prevail against those of her unborn child, whereas potential limit to the absolute right of a competent adult to accept or reject treatment was recognized by English and American courts.

### Streszczenie

Każdy pacjent ma prawo i możliwość decydowania o sobie, w tym o przyjęciu leczenia, nawet jeśli odmowa może grozić trwałym uszczerbkiem na zdrowiu lub doprowadzić do przedwczesnej śmierci. Niezależnie od tego, czy odmowa była racjonalna czy irracjonalna, jej przyczyna nieznana lub nieistniejąca, jeżeli zdolność pacjenta do podejmowania decyzji została zaburzona przez niewłaściwy wpływ osób trzecich, obowiązkiem lekarzy jest leczenie pacjenta w sposób, który uznają za najbardziej optymalny w aspekcie postępowania terapeutycznego. Niebezpieczna praktyka odmowy terapii z różnych powodów religijnych dotyczy prawie wszystkich sekt religijnych oraz w niewielkim stopniu innych grup wyznaniowych. Świadkowie Jehowy uważają, że przyjęcie obcej krwi zamyka drogę do zbawienia. Wyrażają jedynie zgodę na udzielenie świadczenia medycznego przy użyciu środków niekrwiopochodnych. Leczenie takiego pacjenta bywa więc niezwykle trudne dla lekarzy. W związku z powyższym pojawia się pytanie, czy prawa matki odmawiającej leczenia mogą przeważać nad prawami jej nienarodzonego dziecka, podczas gdy potencjalne ograniczenie bezwzględnego prawa kompetentnej osoby dorosłej do przyjęcia leczenia zostało uznane przez sądy amerykańskie czy też angielskie.

This short paper argues that even though that every patient has the right and capacity to decide on accepting medical treatment, even if a refusal might risk permanent injury to his/her health or even lead to premature death, and regardless of whether the reasons for the refusal were rational or irrational, unknown or even non-existent, if a patient's capacity to make a decision had been overborne by the undue influence of others, it is the duty of the doctors to treat her/him in whatever way they considered, in the exercise of their clinical judgement, to be in his best in-

terests. In other words, the arise is whether the rights of a mother refusing to have treatment can prevail against those of her unborn child, whereas potential limit to the absolute right of a competent adult to accept or reject treatment was recognized by English and American courts.

Furthermore if, in a potentially life-threatening situation or one in which irreparable damage to the patient's health can be anticipated, doctors or hospital authorities are faced with a refusal of an adult patient to accept essential treatment and they have real doubts as to the

validity of that refusal, they should both in the public and the patient's interest at once seek a declaration from the courts as to the lawfulness of the proposed treatment and it should not be left to the patient's family to take action (1, 2). As for example, the case in France of a young Jehovah's Witness who suffered a serious post-partum hemorrhage received wide attention: the woman was given a transfusion of four units of blood against her will. In giving judgement, the Administrative Court of Lille noted that the Public Health Code states that no medical intervention can be performed without the consent of the patient, but also recognized that it was the physicians' duty not to respect the patient's will when her life was in imminent danger (3). In order that a physician should not be indictable for the death of the patient he cannot merely desist from administering a therapeutic procedure. The patient's wish (autonomy) not to receive treatment with a transfusion should lead to his/her leaving the healthcare facility either on his/her own initiative or on that of his/her relatives, as logically, so long as he/she remains there, the physician has a duty to save his/her life. In many instances' parents had refused to permit a blood transfusion to be administered to their infant child due to their religious beliefs and concern about contamination. It is postulate that that in an emergency situation where a parent of young children is refusing medical treatment, a court can legitimately consider the best interests of the children as a factor in its decision as to whether life-saving medical treatment should be administered to a patient without his or her consent (4).

We can analyze the situation where the woman who upon admission, signed a standard consent form agreeing to the infusion of blood if it were to become necessary but later might chose not to receive a blood transfusion for religious reasons. To be clear, patient directs that no blood transfusions or blood products should be administered to her person under any (including life-threatening) circumstances (5). She gives no one, including her health-care agent, the authority to disregard such direction. saving patient's life by way of the administration of a blood transfusion would immeasurably benefit the child and the family. Blood transfusions, including transfusions of whole blood, red cells, white cells, platelets, or plasma, should be given to the patient under any circumstances, even in the event of refusal based their refusal on their religious beliefs as Jehovah's Witnesses the teachings of which sect, according to their interpretation, prohibited the injection of blood into the body (6).

The question therefore arises whether could she be compelled to receive medical treatment because her death would cause the abandonment of her child? In hypothetical situation physicians determines that the patient is ready to deliver her child and that a Caesarean section delivery would be appropriate (7). Further amuse, that she consented to the Caesarean section, but not withstanding the routine consent form she had signed, she withheld consent to the transfusion of

blood on the basis of her values and religious convictions as a Jehovah's Witness (8, 9).

The church declared in 2000 that it was up to members to decide whether to accept blood fractions like clotting factors that are extracted from plasma. It has also left to individual conscience whether to accept synthetic proteins that stimulate red cell production or to use mechanical techniques that conserve and salvage blood (10). She strongly believes in that a specific moral and religious code includes a scriptural command to abstain from the ingestion of blood. It is worth to recall that, The Royal College of Surgeons of England has characterized adherence to the command to abstain from the ingestion of blood as a "deeply held core value" of Jehovah's Witnesses, who "regard a non-consensual transfusion as a gross physical violation" (11). In its "Opinion no. 16 on the refusal of blood transfusions by Jehovah's Witnesses" the Belgian Advisory Committee on Bioethics stated that if a major Jehovah's Witness who is *de facto* and *de iure* of sound mind refuses a life-saving blood transfusion the physician is obliged to respect his/her wishes, even if to do so means that the patient will die. It does, however, add a list of conditions that must be met: the patient must reiterate his/her refusal even after being informed of the consequences and should be able to discuss the issue *tête-à-tête* with the physician in a calm environment; the physician must obtain the patient's signature on the release of liability form and add this form to the patient's clinical record; the patient must not suffer from any psychiatric syndrome that might prejudice his/her ability to make a decision specifically in the matter of a blood transfusion and tests should be performed to confirm his/her *de facto* competence to understand the consequences of a refusal, for which at least one reason must be given; the refusal of relatives or other persons accompanying a major Jehovah's Witness who is unable to express his/her wishes is never sufficient (12).

The problem refers to physicians, who apparently believes that transfusions would continue to be needed. Unsure of its legal obligations and responsibilities under these circumstances, the hospital is petitioning the court for an emergency declaratory judgment hearing to determine the hospital's authority or duty to administer blood transfusions to the patients over her objections (13). The parties do not know whether the trial court was aware that a transfusion had already been given at the time of the hearing, but they believe the trial court was aware that transfusions would continue to be needed throughout the medical care. There is an important issues that the court will be called upon to determine, whether in circumstances where a parent has young children, should the right of those children to be raised by their parents supersede the right of an individual to refuse a blood transfusion in a life-threatening situation where such treatment is advised? It could be argued that in the event of the death of patient, the court should properly determinate that the

demands of the state and society outweigh the wishes of patient and that every medical effort should be made to prolong her life so that she can care for her four child until his respective majorities. The rationale for court's decision is simply this that that the patient cannot exercise her right to refuse treatment in the form of a blood transfusion, and because that patient's enjoyment of freedom of individual autonomy should be considered against the rights of mother's newborn child, her family, and the interests of her wider family and society in general. Because of the demonstrated imminence of death from loss of blood, signing the order was necessary to maintain the *status quo* and prevent the issue respecting the rights of the parties in the premises from becoming moot before full consideration was possible. But maintaining the status quo is not the only consideration in determining whether an emergency writ should issue.

In interesting case ReT (adult: refusal of medical treatment) resolved by the England's High Court of Justice, Family Division judges decided that an operation to be performed notwithstanding the mother's refusal of consent where the lives of the mother and the unborn child would both be at risk if the operation were not performed. The court granted a hospital's request to perform an emergency cesarean section operation on a woman against her will. The woman, a "born-again Christian", refused to consent to the operation on religious grounds. The 30-year-old woman had been in labor for two days and was six days overdue. The court relied heavily on a surgeon's contention that the lives of both the mother and the unborn child would be in danger if the natural labor process were allowed to continue. The court exercised its inherent jurisdiction and issued a declaration that a cesarean section and any necessary consequential treatment could be lawfully performed by the hospital, despite the patient's refusal to consent (14-16).

There is a general understanding that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the governments". The issue of children's rights is an area that is consistently developing in both international and domestic legal spheres. Courts in several many jurisdictions have placed the best interests of children at front and center when deciding cases where parents have refused the administration of medical treatment to a child for religious reasons. In the United States, the courts have developed the principle that a person has a right to refuse medical treatment, but it is not absolute and may in certain circumstances be overridden by countervailing considerations. The state, as *parents patriae*, will not allow a parent to abandon a child, and so it should not allow this most ultimate of voluntary abandonments. The patient had a responsibility to the community to care for her infant. Thus, the people had an interest in preserving the life of this mother (17). The District of Columbia Circuit Court considered in 1964 that based on the principle of the

state's role as *parents patriae*, courts will not permit a parent to abandon his or her children (18).

Children are also afforded particular protection by national legislation, which reflects their uniquely vulnerable status as members of society who lack the autonomy to make their own decisions, are dependent upon the care of others (usually parents). Therefore, children shall have the right to be protected from any condition likely to be hazardous, harmful to their health or "physical development". Furthermore, children shall have the right, as far as possible, to know and be cared for by their parents, subject to legislation enacted in the best interests of children. In a case concerning the refusal of an adult patient of full mental capacity to have a blood transfusion administered, the starting point must be the principle of patient autonomy, which embodies both protection of liberty and respect for human dignity national laws. The principle of patient autonomy reflects that it is a basic human right for an individual to be able to assert control over his or her own body. Adhering to this principle requires that a patient must consent to medical procedures after having been properly advised of their risks and benefits, so that the consent is informed. Medical practitioners must inform their patients about the material risks and benefits of the recommended treatment, but it is up to the patient to decide whether to proceed with a particular course of treatment. For this reason, it is the patient's judgment of his or her own interests that is the most important factor. But such refusal must ordinarily be respected so long as the patient is an adult of sound mind and the patient understands the implications of the refusal. It is clearly for the patient, in the exercise of his or her fundamental right to self-determination, to decide whether he or she wishes to undergo an operation, and it is in principle wholly irrelevant that the patient's attitude is grossly unreasonable in the eyes of the medical profession: the patient's right to bodily integrity and autonomous moral agency entitles him or her to refuse medical treatment excluding situation life threatening to other human beings.

## CONCLUSIONS

In conclusion, interests of children in parental care should outweigh the interests of parents in being able to make decisions about medical treatment that affect the parents themselves. The jurisprudence in Europe on several recent occasions affirmed that a pregnant woman can not to refuse to medical treatment if it may imperil the life of her unborn child. "A female patient who has the capacity to decide may not for religious reasons choose not to have medical intervention, taking into considerations the consequence may be the death or serious handicap of the child she bears, or her own death".

Case law is virtually unanimous in holding that informed consent "obliges the physician not to at-

tribute to his/her own evaluations and decisions, no matter that they are intended to safeguard the patient's right to health, a justificatory power that they do not inherently possess as they must be weighed against the other constitutional right to individual freedom". The judge nonetheless concluded otherwise, on the basis of the fact that Article 40 of the Criminal Code attributes legal obligations to the physician, as well as the fact that contractual and ethical constraints "impose the performance of such urgent interventions as are in the best therapeutic interest of the patient", whose technical

knowledge is not comparable to that of the physician (19, 20). When there is a state of necessity and the patient is not able to express his or her wishes the physician is justified in administering the most appropriate treatment to protect the patient's life even when the latter has previously expressed dissent in relation to the treatment in question. Recognized that, bearing in mind the Hippocratic Oath, the physicians had acted correctly in giving the transfusion and could not "logically presume the real 'resistance' of a patient's religious convictions in the face of a sudden life-threatening event".

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