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Jehovah’s Witnesses in the emergency department: what are their rights?

S Woolley

The Jehovah’s Witnesses Society is best known to outsiders for its refusal of blood products, even when such a refusal may result in death. Since the introduction of the blood ban in 1945, Jehovah’s Witness (JW) parents have fought for their rights to refuse blood on behalf of their children, based on religious beliefs and their right to raise children as they see fit. Adolescent JWs have also sought to refuse blood products based on their beliefs, regardless of the views of their parents. Adult JWs have fought to protect their autonomy when making both contemporaneous and advance treatment refusal. The refusal of blood products by JWs raises ethical and legal dilemmas that are not easily answered. Does an individual’s rights (namely bodily control, right to privacy, right to decide about life/death issues, right to religious freedom) outweigh society’s rights (namely the preservation of life, the prevention of suicide, the protection of innocent third parties, and the maintenance of the ethical integrity of the medical profession)? Does the right to choose outweigh the value of human life? For doctors, conflict occurs between the desire to respect patient autonomy and the need to provide good medical care. The Watchtower Society (the JW governing body) imposes a strict code of moral standards among its members, and it is unlikely that individual JWs are making truly autonomous decisions about blood transfusions. While young children and adolescents are protected by the courts and conscious adults are afforded autonomy, dilemmas still arise in the emergency situation. This article examines the rights of young children, adolescents, and adults, focusing in the latter half on adults in the emergency situation.

YOUNG CHILDREN

Traditionally, when children are incompetent, the power to give or withhold consent to medical treatment on their behalf lies with those with parental responsibility. Legally, except in an emergency, parental consent is necessary to perform any medical procedure on an incompetent child. While courts throughout the western world recognise these parental rights, they are not absolute. The right to raise children is qualified by a duty to ensure their health, safety, and wellbeing. Parents cannot make decisions that may permanently harm or otherwise impair their healthy development.

"Parents may be free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children..."

There is, therefore, no legal debate about the ability of parents to refuse blood on their children’s behalf when blood products are clinically indicated. Since the Watchtower Society (WTS), the JW governing body, introduced the blood ban in 1945, courts in the USA, the UK, and Australia have made it clear that parents cannot refuse blood on their children’s behalf, based on three main principles: (a) the child’s interests and those of the state outweigh parental rights to refuse medical treatment; (b) parental rights do not give parents life and death authority over their children; and (c) parents do not have an absolute right to refuse medical treatment for their children based on their religious beliefs if that refusal is regarded as unreasonable.

ADOLESCENTS

The situation regarding the ability of mature minors to refuse medical treatment is not as straightforward. In Canada, despite pre-1996 court decisions supporting the notion of adolescent autonomy, adolescents may not refuse medical treatment. In the USA, three states recognise the "mature minor" concept but elsewhere adolescents rely on parental decision making. In England and Wales, mature minors may consent to, but may not necessarily be able to refuse, treatment. In Scotland, although not specifically referred to, the Age of Legal Capacity Act implies that a competent child may refuse, as well as accept, treatment.

The debate commenced in 1985 with Gillick v West Norfolk. The majority of the House of Lords were clear that if a child under 16 years could demonstrate sufficient understanding and intelligence to fully understand the treatment proposed they could give their consent to treatment. Unfortunately this case did not address the issue of treatment refusal. Subsequent cases may possibly be seen as undermining the ability of minors to make decisions about the refusal of medical treatment, as in each case the court has exercised its right to overrule the decisions of minors "in the best interests" of the child. In all cases concerning adolescent JWs, the courts have allowed transfusion, with the judges expressing concern about the child’s ability to make a fully informed decision.

Abbreviations: JW, Jehovah’s Witnesses; WTS, Watchtower Society
decision because of their sheltered upbringing and the influence of the JW faith.

ADULTS

Although the state has an interest in the preservation of life, that interest is not absolute. Individuals have the right to control their own person and part of that autonomy is the “right to make choices pertaining to one’s health, including the right to refuse unwanted medical treatment”. Although this right should encompass all medical choices, including the refusal of blood products, JWs have had to defend this right in the courts.

Although there are no UK cases concerning competent non-pregnant adult JWs, cases have appeared before the courts in the USA since 1964. These cases focus primarily on an individual’s rights versus state interests. Earlier cases placed the state’s interest before an individual’s right to refuse unwanted medical treatment and subsequent cases have used a variety of arguments to transfuse adults against their wishes. However, in 1985 the appeal court in In Re Brown ended the debate with a strong statement supporting an individual’s right to refuse medical treatment:

“Rights are subject to compromise only when they collide with conflicting rights vested in others...The right of free exercise of religion protects more than mere beliefs...Religiously grounded actions or conduct are often beyond the authority of the state to control...”

This statement is supported by subsequent cases, and gives competent adult JWs the right to refuse unwanted blood products, even in the USA.

THE EMERGENCY SITUATION

Unconscious JWs, with signed blood refusal cards, a form of advance directive, create medical, ethical, and legal dilemmas for healthcare professionals. English law is clear and unequivocal. Patients have the right to refuse medical treatment “for reasons which are rational or irrational or for no reason” and “even in circumstances where she is...certain to die in the absence of treatment”. This absolute principle is applicable to an individual’s right to refuse medical treatment: “Right to make choices pertaining to one’s health, including the right to refuse medical treatment”. This statement is supported by subsequent cases, and gives competent adult JWs the right to refuse blood products, even in the USA.

Unfortunately, the two leading legal cases considering unconscious JWs offer conflicting advice. In Dorone, the Supreme Court upheld a decision to allow transfusion, whereas in Malette, the physician was found liable for battery. The standard in Dorone essentially precludes application of any form of advance directive. Conversely, the court in Malette accepted the undated, unwitnessed card at face value.

What, therefore, should doctors do in the emergency situation? In an emergency, treatment that is in the patient’s best interests may be given under the doctrine of necessity. However, this doctrine assumes that “under the circumstances, a reasonable person would consent, and thus the probabilities are that the patient would consent”. This doctrine is unlikely to apply to JWs, as most, if conscious, would object to treatment.

In the USA, the court in Dorone reconsidered the issue of advance directives and ruled that a signed card was valid even though the patient had not mentioned the advance directive while conscious. The court accepted these arguments, adopting the approach in Dorone.

“...if there is doubt, that doubt falls to be resolved in favour of the preservation of life.”

There, therefore, are no formal requirements for a valid advance directive... There are no formal requirements for the revocation of an advance directive... An advance directive is inherently revocable... The burden of proof is on those who seek to establish the existence and continuing validity and applicability of an advance directive... If there is doubt, that doubt falls to be resolved in favour of the preservation of life.”

Therefore, in the emergency situation, if doubt exists about the validity of a blood refusal card, physicians should aim to preserve life and administer the necessary blood products.

CONCLUSION

JWs presenting to the ED continue to cause concern. However, the law regarding young children, adolescents, and adults (in the non-emergency situation) is clear: parents may not refuse blood on their children’s behalf if such a refusal is deemed unreasonable, adolescents cannot necessarily refuse blood, and competent adults can refuse unwanted treatment.

In an emergency, the situation is more complex, particularly as there are concerns about how informed individual JWs are about the risks/benefits of blood. Physicians should provide the necessary information for an individual to make an informed choice and where this is not possible, physicians should administer blood products in life threatening situations, if any doubt exists about the validity of a blood refusal card.

Competing interests: none declared

REFERENCES

2. Anonymous. “A patient in hospital may be fed through the mouth, through the nose or through the veins. When sugar solutions are given intravenously, it is called intravenous feeding. So the hospital’s own terminology recognizes as
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feeding the process of putting nutrition into one’s system via the veins. Hence the attendant administering the transfusion is feeding the patient blood through the veins, and he is present receiving it as eating through his veins. *The Watchtower* 1951 July 415.


5 CTPA 1953, sections (1) and (2)(a) but liability here is not as a parent but as a person over 16 having the ‘custody, charge or care’ of a child under 16.


8 Prince v Massachusetts (1944) 321 US 158 at 170.


11 Birdett v Director General of Family and Community Services (unreported decision of Supreme Court of New South Wales, 3 Feb. 1994, No. 3161 of 1993).

12 Assistant Director General, Department of Community Services (unreported decision of Supreme Court of New South Wales, 3 Feb. 1994, No. 3161 of 1993).


18 Age of Legal Capacity (Scotland) Act, 1991.