When is it Ethical to Treat Someone Against His or Her Wishes?

The Arnold P. Gold Foundation Ethics for Lunch Seminar Series

A Difficult Case from the NewYork-Presbyterian Hospital Ethics Committee

Kenneth Prager, M.D., F.A.C.P.

November 10, 2011

The Ethics for Lunch presentation began as Dr. Ruth Fischbach, Director of the Center for Bioethics, greeted the diverse audience and thanked Drs. Arnold and Sandra Gold for their continued seven years of generosity that have made these Ethics for Lunch events possible. The Gold Foundation is committed to promoting humanism in medicine and more generally to furthering passion for compassion in medicine. Dr. Arnold Gold likes to remind us that -- THE HEAD BONE IS CONNECTED TO THE HEART BONE -- NEVER LET THEM BECOME DISCONNECTED.

Dr. Fischbach set the context for this session. Physicians are committed to providing the best care for the patient and often that care will involve a surgical procedure. Of course, we like to assume that the patient is able to both understand the reason for surgery and to comprehend the explanation of the proposed procedure with its likely benefits and potential risks. And at the end of the doctor’s full explanation, we assume the patient will provide informed consent for the procedure.

But what if the patient has a mental illness that precludes her understanding of what is proposed with its likely benefits and potential risks. In the case today, she is clearly and emphatically saying “no” to the doctors. Obtaining informed consent is impossible. So what’s the physician to do?

This raises one of the most intense dilemmas that physicians encounter. Given the physician’s respect for the dignity of the patient and the patient’s self-determination as well as an equal measure of the doctor’s beneficence and compassion, the dilemma is clear.

The doctor can respect the patient’s objections and call off the surgery which would mean the patient will not benefit and may face potentially bleeding to death. Or, given the seriousness of a life threatening bleed, the doctor can decide to trump the patient’s autonomy in the name of beneficence, and go ahead with surgery without the patient’s consent and despite her clearly stated objections. The legal implications as well as ethical implications are worthy of consideration and that is what we will do today.

Dr. Fischbach then proceeded to introduce the speaker, Dr. Kenneth Prager, who is the Director of Clinical Ethics for NYPH, Chair of the NYPH Ethics Committee, and Director of Clinical Bioethics for the Center of Bioethics. Most of all, he is an outstanding teacher and compassionate physician.

Dr. Prager described the case as follows: A fifty-year-old woman, with a history of schizophrenia, is brought to the Emergency Room after having fainted from excessive vaginal bleeding. She emphatically refuses surgery. The medical team is faced with two competing objectives: to respect the patient’s wishes or, given the severity of her condition, to go ahead with life-saving treatment.
Doctors are able to convince the patient to accept a blood transfusion. Her hematocrit level of 2.2 is dangerously low; normal levels range from 38 to 45. The transfusion is only a temporary fix. The patient has been to the hospital previously, during which time her doctors determined that she has extensive uterine fibroids. Further bleeding seems likely without a more invasive treatment plan.

The medical team brought in the psychiatrist on-call for a consult who determined that the patient lacked capacity to make an informed decision. She was, to use the psychology terminology, ‘floridly psychotic.’ The patient said that while she eventually wanted a hysterectomy she now needed to wait five months for the resolution of her million-dollar lawsuit involving a multinational corporation with which she shared her last name. Moreover, she complained that she had been poisoned, subsequently bumped her head, and that while she was unconscious someone had implanted a microchip in her brain.

Dr. Prager summarized the scenario by highlighting the ethical issues at play: autonomy, beneficences, non-maleficence, and justice. Then Dr. Prager turned to historical precedent. In the case of Schloendorff v. Society of New York Hospital (1914), a physician at the New York Hospital performed a hysterectomy on a patient having deemed it medically appropriate, but the patient had only agreed to a standard examination under anesthesia. While the court ruled in favor of the hospital, New York Supreme Court Justice Benjamin Cardozo issued one of the most powerful statements: “Every human being of adult years and sound mind has a right to determine what shall be done with his own body... except in the case of emergency where the patient is unconscious and where it is necessary to operate before consent can be obtained.”

Dr. Prager went on to explain that informed decision-making requires that a patient: 1) understand the nature of the disease, 2) has to be able to state a choice, 3) understand the consequences of his or her choice, and 4) be able to rationally integrate information.

By way of example, Dr. Prager encouraged the audience to consider the following groups of patients: Jehovah’s Witnesses, Christian Scientists, patients wanting traditional medicine, people from a small sect who believe that coffee enemas have curative properties, and seniors with diagnosed depression. Dr. Prager suggested that towards the end of this spectrum, people truly lack the capacity for informed decision-making, but in the former examples people have the capacity for decision-making and choose to accept the consequences of their decisions.

Dr. Prager emphasized that if a rational person in the same condition as the patient discussed in this case had chosen to forgo intervention, while doctors would invariable disagree with the patient’s decision, they would be obligated to respect her autonomy.

Yet, once again, the patient being discussed was not rational and therefore had diminished autonomy precluding her full participation in the decision. Notably, however, diminished autonomy is, as Dr. Prager explained, not enough to necessarily warrant intervention without consent.

There are other issues that need to be considered. The more immanent and severe the condition, the more effective the procedure, the lower the risk of said procedure, the easier the recovery, and the smaller the risk of psychological trauma, the greater the ethical imperative for treatment. In this case, it was unclear whether another bleed was imminent. On the other hand, removing the uterus would entirely eliminate the possibility of death from another uterine bleed. With regard to the logistics of
recovery, it would not be extremely burdensome. And while the future inability to conceive could cause psychological turmoil for some patients, it was not likely to affect this woman who was postmenopausal.

Having considered all these issues, the Hospital Ethics Committee advised the surgical team to perform the hysterectomy over the patient’s objections. But first, a judicial injunction directed the medical team to hold off on the hysterectomy for at least two weeks while they treated the underlying psychosis to see if she would regain capacity. Fortunately, the patient responded to Risperidol within the designated time frame. While she remained delusional about the poisoning, and continued to insist she was never psychotic, she became more organized and consented to undergo a hysterectomy.

Dr. Prager explained that it is not often that psychiatric treatment works so effectively in such a short time frame. That said, in this particular example it was not as if Risperidol fully restored her decision-making ability. The patient did not fully grasp the nuances necessary to qualify her as having given fully informed consent. She was, however, like a child, able to assent meaning that she knowingly agreed to the procedure.

In summary, this is a beautifully illustrative example of how clinical ethics and humanistic approaches can lead to positive patient outcomes. The respect demonstrated for the patient’s limited autonomy and, ultimately, the decision to first treat the underlying psychosis, allowed the medical team to help guide the patient to a sound decision rather than impose their better judgment against her will but on her behalf.