

Risk Management: A Patient's Right to Refuse Medical Treatment

The following information is provided by Preferred Physicians Medical to provide you with an outline for discussions with hospital officials regarding the proper handling of situations involving the refusal of medical treatment. It should be noted that this overview is not intended as legal advice. Preferred Physicians Medical strongly encourages any action to address such situations be undertaken with the full participation of qualified legal counsel. The information provided below is an extremely edited version of research in this area that was compiled to address a specific situation in the State of Missouri. Statements of law and legal opinion should be carefully reviewed in light of more recent statutory enactments and case law. Also, different standards may apply depending on the jurisdiction in which you practice.

Adult Patient's Right to Refuse Treatment

Competent adult patients have the right to refuse any medical treatment for themselves. Mo. Rev. Stat. § 431.061; Cruzan v. Director Missouri Department of Health, 110 S. Ct. 2891 (1990). Accordingly, a competent adult patient that does not want to receive blood should be required to sign a release which explains the risks inherent in refusing treatment and holds harmless the hospital, its agents, employees, and any physicians who might treat the patient, from all liability arising out of the refusal of treatment.

Additionally, State law in many jurisdictions may recognize the validity of advance directives. Advance Directives allow an individual to designate a surrogate to act as a substitute decision-maker when the person lacks the capacity to make health care treatment decisions. Such a document becomes effective when the individual lacks the capacity to make health care decisions. If an adult patient presents to the hospital incapable of making treatment decisions and has an advance directive and the individual designated as the substitute decision maker refuses blood, the hospital should have the substitute decision maker sign the release holding harmless the hospital, its agents, employees, and any physicians who might treat the patient from all liability arising out of the refusal of treatment.

Parents Right to Refuse Treatment for Minors

With regard to refusal of treatment based upon religious grounds, courts have generally ordered that blood transfusions be administered to children in life threatening situations over the objections of parents who base their decision on religious grounds. See, e.g., Morrison v. State, 252 S.W.2d 97 (Mo. App. 1952). Therefore, when a minor patient and/or family member refuses a life-saving blood transfusion on religious grounds or other grounds, such as fear of HIV contaminated blood, the doctor or hospital

may often seek a court order to administer the transfusion over the patient's objections. For example, in Missouri, the juvenile courts have the jurisdiction and discretion to order blood transfusions for minors when medically necessary.

If such a situation arises, appropriate hospital personnel should contact the appropriate officials. Hospitals should check to see whether the Courts or Juvenile Justice Center in your area has established a protocol for these situations. Some Counties in some jurisdictions have an established protocol and provide someone to answer the telephone at all hours, or provides an emergency alternative for obtaining a court order.

Again, it should be noted that the right to refuse medical treatment generally is a very complex area of the law. It is not an area in which general conclusions are easily drawn. In fact, the only real conclusion that can be drawn from the conflicting legal precedents is that the validity of a refusal of treatment depends on the particular situation of the patient so refusing treatment. For this reason, it is important to seek the advice and assistance of legal counsel. Also, because of these same complexities it is important for hospitals to develop a response in advance of a medical emergency. If procedures are not already in place, it may be impossible to marshal the necessary resources within the time required by a medical emergency.

Right to Refuse Medical Treatment

The right to refuse treatment is generally based in the common law right of self-determination of one's body and the doctrine of informed consent. Further, the right to refuse medical treatment has also been held to derive from a federal and state constitutional right to privacy. Additionally, the United States Supreme Court recently held that a competent person has a liberty interest in the due process clause in refusing any unwanted medical treatment.

Overview of Missouri Statutory Provisions Regarding Minors and Health Care Treatment Decisions

In Missouri, parents have the right to consent to health care treatment for their children. Mo. Rev. Stat. § 431.061. Parents also have the right according to statute to refuse health care treatment for their children unless the child will be harmed if the health care treatment is not provided. Mo. Rev. Stat. Sections 431.061 and 211.031. Further, if failure to provide medical treatment to the minor will result in harm to the child, the state may take custody of the child. Mo. Rev. Stat. § 211.031.

Religious Based Refusal of Blood Transfusions

The right to refuse medical treatment may also be based upon the freedom of religion. With regard to refusal of treatment based upon religious grounds, the courts have consistently ordered that blood transfusions be administered to children in life threatening situations over the objections of parents who base their decision on religious grounds. The United States Supreme Court has stated that the right to practice religion freely does not include the liberty to expose a child to ill health or death. It is less clear whether the courts would order a transfusion for a minor in a less than life threatening situation.

It should also be noted that no cases in any jurisdiction were found in which blood transfusions were given over the refusal of a patient without first seeking court approval.

Missouri statutory law does provide that consent to medical treatment shall be implied in an emergency situation if there has been no refusal of consent. Mo. Rev. Stat. § 431.063. Therefore, when an incompetent or minor patient and/or family member for a minor refuses a life-saving blood transfusion based upon religious grounds, the doctor or hospital should properly seek a court order to administer the transfusion over the patient's objections.

The above-described situations should be clearly distinguished, however, from that in which a competent adult refuses a transfusion. Certainly, if it is determined that the patient is a competent adult, does not want the transfusion under any circumstances and there are no *parens patriae* concerns, the patient should be required to sign a release which explains the risk inherent in refusing treatment and holds harmless the hospital, its agents, employees, and any physicians who might treat the patient, from all liability arising out of the refusal of treatment.

ISSUE

Question

What action should be taken by medical personnel when a patient is in need of a blood transfusion, and the patient and/or his family refuses to consent to administration of the transfusion based on his religious beliefs?

Answer

The issue of right to refuse medical treatment is a very complex area of law. In fact, the only real conclusion that can be drawn from the conflicting legal precedents is that the validity of a refusal of treatment depends on the particular situation of the patient so refusing treatment. If the hospital wishes to minimize risk, and also wishes to pursue the administration of blood transfusions in the interest of saving lives, the following policy is recommended: Unless the patient refusing a transfusion is a clearly competent adult, is not pregnant and is not solely responsible for minor

children, an attempt should be made to obtain a court order before blood is administered.

Another possible policy option may be for the hospital to adopt an ad hoc balancing test to determine whether to honor each refusal. The factors to be considered should be:

1. Whether the patient voluntarily sought treatment (if treatment is voluntary or elective, a patient's refusal may be less valid, as compared to refusal by a patient brought to the hospital in an emergency situation);
2. Whether the transfusion is necessary to save the patient's life (the more necessary, the greater the chance the court would order transfusion);
3. The age of the patient (if an infant, parental refusal is not usually valid; if a teenager, joint refusal of the patient and parents is probably valid);

4. Whether the patient is pregnant, and if so, how many weeks (the farther along, the greater chance the transfusion would be court-ordered);
5. Whether the patient is solely responsible for innocent third parties (a single parent, even if a competent adult, may not be able to refuse treatment); and
6. If the patient is an adult, but not competent to refuse treatment, it becomes necessary to determine the patient's desires, whether by living will or opinion of spouse and family (this situation is very uncertain after the Cruzan decision, but a

refusal by a spouse or parent is not alone clearly valid).

Once all of these factors have been examined for a particular patient and their relative weights considered, medical personnel should determine their overall level of confidence in the validity of refusal and should also consider the availability of obtaining releases from liability. It should be remembered, however, that a release of liability is not necessarily valid in all cases. Given the complexity of law on this issue, it is strongly advisable to consult legal counsel in any situation where refusal occurs.