ETHICAL AND LEGAL ISSUES IN HEALTHCARE

Balancing paternalism and autonomy in professional practice

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Jehovah's Witnesses generally take the decision to obey the Bible's command to '*abstain from blood – Acts 15:20*'.[1] The impact on medical care could include a refusal, on religious grounds, to consent to the administration of blood transfusions or blood products such as Anti-D. In late April 2008, two related cases came before the Irish High Court.

The more straightforward of the two cases dealt with the welfare of severely anaemic twins at 32 weeks' gestation. The ideal management of such a pregnancy would involve the twins receiving a transfusion in the womb, an option not consented to by their Jehovah's Witness parents. The 'next best' option would generally be to deliver the twins prematurely and provide them with a transfusion immediately after birth. Given the likelihood of harm to the twins if such transfusions were delayed, the medical team sought, and received, a Court order authorising them to provide such care in the absence of parental consent.

The second case resulted from the transfusion of Ms K[2] by staff at the Coombe hospital, against the wishes of Ms K. The judgement considered, amongst other things, that members of the medical team were entitled to doubt Ms K's capacity to give a valid refusal at that point in time, based on her medical condition after major haemorrhage, communication difficulties and the apparent absence of family members with whom the medical staff could confirm her religion and her understanding of the situation.

Autonomy may be defined as the right to consent to or refuse a healthcare intervention as offered. This represents a right to control what will be done with one's body. In Western[3] societies there is a general belief that people have total autonomy over healthcare decisions relating to themselves. In order for consent to be exercised, the patient must have capacity/competence to make a decision, be appropriately informed and be free from coercion. It is rare that the courts deem an adult to not have capacity to make healthcare-related decisions for themselves.

Paternalism by a healthcare practitioner can result in the wishes of a patient being over-ruled, generally justified by a belief that the practitioner is acting in the best interests of the patient. There may be situations where a competent patient may validly refuse medical procedures which involve the use of blood products, even where healthcare professionals believe that in their opinion such refusal will not be in the patient's best interests. However, it was because Ms K could have been considered incompetent to make a decision to refuse the transfusion at the time it was offered to her, that justified the right of the medical team to transfuse her in her 'best interests'.

Young children, as in the case of the twins to be newly born, are not considered to have capacity to make healthcare-related decisions for themselves. Society generally expects that parents will act in the 'best interests' of their children and hence affords parents the 'paternalistic' right to make decisions on their behalf. Interference in the family in a manner that over-rules choices made by competent parents is rare. The above cases are a reminder that, despite the centrality of 'respect for autonomy' in modern Western healthcare, exemplified by the right to consent, there is still a role for professional or state paternalism.

Indeed it could be argued that medicines used in the practice of pharmacy operate under an umbrella of 'valid' paternalism. The objective of pharmacy is to improve a patient's quality of life by managing medicines usage. No medicine is consumed without risk. Society restricts access to medicines according to their perceived potential to do good or harm – restricting some to be sold 'by or under the direct supervision of a pharmacist', others to require a prescription, while those believed to have little potential to improve quality of life, while having considerable potential to cause harm, are classified as illegal. In choosing to make certain drugs 'illegal' the state is certainly acting paternalistically.

Pharmacists regularly face dilemmas regarding this balance between respecting a patient's autonomy and making paternalistic attempts to act in what the pharmacist sees as the patient's best interests, most difficult being the scenario where the pharmacist truly believes that serious harm will inevitably come to the patient if he/she does not take appropriate advice.

Consider 'Liz', who becomes convinced that a particular complementary product will supersede the need for Tamoxifen therapy for a particularly aggressive type of breast cancer (Chaar, 2006). Research on the complementary product produces little 'evidence to support the claim that the product helps prevent breast cancer metastases or recurrence at the primary site'.

Liz is a long-standing patient at the pharmacy. She presents as competent, informed and free from influence. Will you accede to her autonomous wishes and sell the complementary product without further concern? I believe that most pharmacists would enter a phase of paternalistic overdrive if faced with such a scenario.

In a similar line of thought, consider the case of supply and sale of potentially addictive medicines from the pharmacy – such as those containing codeine. In theory the patient is 'entitled' to purchase. The pharmacist's right to refuse sale is based on interpreting the patient's best interests, which are certainly not always easy to define during the quick interchange as occurs at the pharmacy counter. When interviewing such patients there is often a sense of tension as the pharmacist treads the fine line between being seen to abuse the dominant and paternalistic position (of controlling supply of the product) and acting in the patient's best interest (where the pharmacist perceives that the patient is using the medication in a manner which leads to more risk than benefit).

And finally to the question of why you might not sell a large pack of laxatives? The potential for OTC laxative misuse, being a perceived route to the slim figure so desired by many young teenage girls (and indeed teenage boys and older adults), is something pharmacists need to be conscious of. For example, when I owned my own pharmacy, it did not stock anything other than the smallest pack size of proprietary brands. Quite apart from the potential risks, physiologically, of laxative misuse, it seemed to me that it represented a route to a philosophy of misusing. 'Appropriately informed' status of such risks could not be guaranteed.

While I believe a professional duty of care entitles pharmacists to take a paternalistic approach to many such aspects of day-to-day practice, practitioners could certainly be accused of using the position as gatekeeper of such medicines to obstruct purchase by 'consumers' and of making significant efforts to exert influence over potential purchasers. The challenge is to ensure that such paternalism is represented as professional, rather than unprofessional, behaviour.

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1 Jehovah's Witnesses statement by the office of public information of the Jehovah's Witnesses, published in the *Irish Times*, Friday April 25th 2008; P.4

2 Fitzpatrick and Anor –v– F K and Anor [2006] IEHC 392

3 However this perception of the individual's rights being supreme is not held so preciously in other cultures. China, for example, would place more emphasis on collective decision-making and the rights of the group or society as a whole, with individual autonomy taking a somewhat less prominent position.