



# e-Network Forum

## CALIFORNIA BLOOD BANK SOCIETY

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### ***Overriding a patient's request to refuse transfusion***

**A California medical center** is currently updating their blood transfusion policies and would like input regarding their current policy for refusal of blood transfusion, as outlined below. The legal department of the inquiring institution is aware of the laws regarding informed consent for blood transfusions. However, they are trying to locate information which would or would not support their current policy (see below) that would override a patient's request to refuse transfusion. Specially, the institution wants to know from the e-network forum **what laws, statutes, regulations, if any, define and support seeking court orders for patients refusing transfusion**. The inquiring institution's policy is as follows:

- A. A patient is given sufficient information, including information on alternatives in order to make an informed decision.
- B. A competent patient has a right to refuse transfusion and his/her wish to be honored.

#### **A court order may be sought if:**

- Preserving the life of a **pregnant woman** with survival of the fetus is at stake (State's duty to preserve life - that of the child - may override the mother's right to refuse treatment).
- Preserving the life of an **adult with dependent children**.
- Parent of a **minor child** refusing to consent to blood transfusions necessary to save the child's life.

If a court order is not practical because of an extreme emergency under the above listed circumstances, the transfusion may be given with documentation of special circumstances.

- C. A maternity patient who is Rh negative, who recently delivered a Rh positive child, and who refuses anti-D immunoprophylaxis, needs to sign a Refusal to Permit Treatment. A physician may choose not to attend such a patient if she is known to refuse blood request care at the beginning of her pregnancy.

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The following responses were submitted:

1. **A transfusion medicine physician, who is also an attorney**, replied that the institution in question needs to have their **own attorney consult local state law**. Under general terms, their policy fits most situations which have reached courts except for the Rh Immune Globulin. The latter issue is often overlooked, but should be considered with a specific consent. For just about all of their scenarios, in most jurisdictions, a court order would be prudent. While the Rh Immune Globulin scenario involves a competent patient, and not in an emergency, one could argue the potential of harm or death to a future child, and put the judge on the hook. What they haven't considered is **what to do if there is an intervening relative with an adult, such as a spouse**. For example an unconscious adult patient has a wallet card saying the patient doesn't want transfusions, and the spouse says transfuse. There are a number of other scenarios wherein the role of spouses, parents, etc., may come in conflict with the seeming desires of the patient.

**ADDENDA** Sept. 10, 2002

2. **A transfusion medicine physician in Pennsylvania** replied that the examination of prior case law will help to formulate policy from a legal/risk management standpoint. According to the Pennsylvanian, "It is presumed that the majority of cases of a patient's refusal of blood transfusion would be based on religious grounds (e.g., the Jehovah's Witness patient). There is a great deal of case law upholding the competent adult Jehovah's Witnesses' refusal of blood and components **regardless of pregnancy and/or dependent responsibilities**. From a legal/risk management perspective, **a key element is communication between the patient, the physician, and the hospital** so that everyone is clear about the patient's wishes, the associated risk(s), and the patient's ability to make a competent, autonomous and informed decision. Obviously, the **emergency situation** is a special circumstance." From an ethical perspective, the Pennsylvanian

adds that he thinks a hospital forcing a competent adult patient to receive a transfusion against their wishes is problematic and on a slippery slope, whether or not the patient is pregnant. The case law, and ethical analyses, surrounding the prosecution of pregnant women found to abuse drugs, for example, has upheld a woman's right to control her own body and what happens to it. He asks "Is it any different for a pregnant woman who refuses a blood transfusion, or Rh immune globulin, or a drug rehabilitation program, etc.? On the other hand, **the courts have upheld forced treatment (including transfusion) of a minor child**, who is generally not considered to be 'competent' to make their own informed decisions. There is a great deal of legal and ethical literature on this topic." The responding physician recommends the following references:

- Smith ML. Ethical perspectives on Jehovah's Witnesses' refusal of blood. *Cleveland Clinic J Med* 1997;64:475-481.
- The entire October 1991 issue of *Transfusion Medicine Reviews* was devoted to this issue.
- Macpherson CR, Domen RE, Perlin T. *Ethical Issues in Transfusion Medicine*. AABB Press, 2001. (Particularly the chapter on confidentiality and informed consent.)

Finally, the Pennsylvanian comments that the proposed policy also makes the statement that, "A physician may choose not to attend such a patient if she is known to refuse blood request care at the beginning of her pregnancy." In his opinion, while the establishment of a mutually agreeable physician-patient relationship is the ideal, it is **important that the patient not be "abandoned" and be left without any care options**. "Physician abandonment is unethical, and is probably illegal as well, so that such a broad statement should be followed by some sort of plan or assurance that the patient will not be abandoned and will have access to otherwise appropriate medical care."

#### **ADDENDA** Sept. 16, 2002

3. **A surgeon from Alabama** wrote that he has been **involved as a physician expert** in litigation in this area in a number of states and Canada. He states: "The respondent from Pennsylvania is correct in stating that **state law determines how one must act in these circumstances**. In general, all states have emergency services acts that allow a physician to transfuse a patient in a life threatening emergency without obtaining informed consent. This applies to adults other than Jehovah's Witnesses and to the minor children of Jehovah's Witnesses. In other words, it is not necessary in a true emergency to obtain a court order to transfuse a child. If you **KNOWINGLY** transfuse an adult patient who is one of Jehovah's Witnesses, be prepared to be sued for assault. Hospital policies will not protect you as the law is very clear on the individual's right to choose, even if the choice leads to death. Input from an attorney who is **KNOWLEDGEABLE** in this area is a must in setting up policies. Don Ridley is the legal expert for the Watchtower. Your local area Hospital Information Committee member of the Jehovah's Witnesses can tell you how to contact him. **The issue of spousal consent** has changed in recent years. A few years ago, the New Jersey courts allowed a non-JW spouse to intervene and grant the right to transfuse his JW wife while she was unconscious in the operating room. (*Hughes v. Cooper Hospital*) Upon Appellate Court review, the decision was upheld **BECAUSE THE PHYSICIANS INVOLVED HAD FAILED TO INFORM THE PATIENT THAT SHE MIGHT DIE WITHOUT A TRANSFUSION**. Read another way, they failed to obtain informed consent. The Watchtower Society has corrected this problem by including a statement that the patient understands that he or she might die if not transfused and accepts the consequences. This is clearly stated on the card the Witness patient carries. Therefore, seeking consent from a spouse or family member may not protect you. Surprisingly, many states do not legally accept a spouse for consent purposes. We have traditionally used spouses and family members for this purpose but they are not considered legally acceptable, especially if the patient has a different advocate listed in an advance directive. **In the case of a minor, you must be VERY SURE that you are dealing with a life-threatening emergency and that there is no other recourse available to you**. Judges are becoming more sophisticated and may require that the court order be specific, i.e., the patient needs platelet transfusions to increase the count to above 10,000. The order would then permit **ONLY** platelets and would require the physician to report the progress of the patient back to the judge after transfusion. Experts in the field of bloodless medicine and surgery will challenge you in court based on collective data as to the emergent nature of the situation. All should be aware that **EVERY** type of surgery has been done with very low hematocrits without the need for blood and that patients with critically low hemoglobin levels, i.e., 2- 3 gm/dL, have been treated successfully. So, the bar has been raised to a height that all must attain. **If you have not called a bloodless medicine and surgery center** or looked into transferring the patient to such a center, you will be held accountable for this failure."

#### **ADDENDA** Sept. 16, 2002

4. **A program coordinator for a Bloodless Medicine and Surgery program in Nebraska** reports that he would suggest contacting a particular attorney (Donald Ridley, Esq. at (845) 306-1000) for more information about when it is appropriate or inappropriate to override a patient's request to refuse transfusion. According to this person from Nebraska, Attorney Ridley has been involved in several states in which blood transfusions have been given or ordered, and is a great resource on this subject.



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Please submit comments to the [e-Network Forum](#).

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CBBS e-Network Forum Editor & Moderator

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**Addenda:** Sept. 10, 16 & 27, 2002

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