

Conference article

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Blood transfusion in children: the refusal of Jehovah's Witness parents'

<https://doi.org/10.1515/med-2018-0016>

received January 12, 2018; accepted March 5, 2018

Abstract: In Italy, both parents have parental responsibility; as a general principle they have the power to give or withhold consent to medical procedures on their children, including consent for blood transfusion; however these rights are not absolute and exist only to promote the welfare of children.

Methods. The Authors discuss ethical and legal framework for Jehovah's Witness parents' refusal of blood transfusion in Italy. They searched national judgments concerning Jehovah's Witness parents' refusal of blood transfusion – and related comments – in national legal databases and national legal journals, and literature on medical literature databases.

Results. In the case of Jehovah's Witness parents' refusal of blood transfusion for their child, Italian Courts adopt measures that prevents the parents from exercise their parental responsibility not in the child's best interest.

Discussion. In the event that refusal by the parents, outside of emergency situations, exposes the child's health to serious risk, health workers must proceed by

notifying the competent authority, according also to the Italian Code of Medical Ethics.

Conclusion. When the patient is a minor, the child's best interest always come first.

Keywords: Blood transfusion; Information; Children; Jehovah's witness

1 Introduction

In Italy, legally, except in an emergency situation, as a general principle parental consent is required in order to perform any medical treatment on a minor (under 18); both parents have parental responsibility and they have the power to give or withhold consent to medical procedures on their children [1,2]. They exercise this responsibility by mutual agreement, with due consideration for their child's capabilities, natural inclinations and aspirations.

Special circumstances may occur, and these are covered by the law. If the parents are not in agreement on matters of particular importance, each one may submit the matter to the judicial authorities. If either parent is away or under any other form of impediment that prevents them from exercising their parental responsibility, it is exercised solely by the other parent. In situations not classified as routine where the health care staff receive consent from only one parent, they must weigh the pros and cons with care, assess how long it would take to consult the other parent, the degree of invasiveness of the treatment and the level of risk involved, the urgency and the gravity of the minor condition, bearing in mind that the priority in all decisions must be the best interest of the minor.

Section 24 of the Decree of Minister of Health of November 2, 2015, on requirements for quality and safety of blood and blood components, contains specific rules concerning the acquisition of informed consent to blood

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transfusion. In particular, when the patient is a minor, consent must be given by both parents or legal guardian. If parents are not in agreement or refuse the blood transfusion, consent must be requested at the probate judge; taking into account the degree of maturity of the minor, it is advisable to obtain his/ her assent.

Courts throughout the western world recognize these parental rights, “but additionally recognize that these rights are not absolute and exist only to promote the welfare of children” [3].

Consideration should be given to cases in which both parents refuse consent for a treatment that the health care staff consider important for the minor and this treatment refusal may be prejudicial to the health of the minor.

In these cases, if the situation is not one in which rapid action must be taken to avoid the risk of permanent harm for the minor, health professionals are obliged to report the situation to the judicial authorities and wait for the Court to issue a measure that prevents the parents from exercising their parental responsibility with regard to this particular decision and thus authorizes the treatment.

Some Authors [4] underline that, “it is morally required – not merely morally permitted – to overrule this parental refusal of treatment, because the refusal does constitute a form of child abuse, child endangerment, child neglect or inattention to the rights of the child.”

2 Methods

The Authors discuss ethical and legal framework for such circumstances in Italy, also in relation to the main judgments of Italian Courts. They searched national judgments concerning Jehovah’s Witness parents’ refusal of blood transfusion – and related comments – in national legal databases and national legal journals, and literature on medical literature databases, using these search terms: “Jehovah’s Witness parents’ refusal.”

3 Results

In the case of Jehovah’s Witness parents’ refusal of blood transfusion for their child, health professionals “must take the consideration as valid that nobody can be deprived of life by their own parents” and can therefore ask immediately for the ordinance of judicial authority to authorize the transfusion [5].

Notifying the judicial authorities thus enables the adoption of the measures necessary to guarantee the pro-

motion of the wellbeing of the minor, and avoid a tragic outcome. Judicial authorities may demand certain forms of conduct from those with parental responsibility, or override their wishes in the decision-making process concerning the treatment to be carried out in the interests of the child, or even temporarily remove their parental rights.

Italian Courts have dealt with several cases of Jehovah’s Witness parents’ refusal of blood transfusion.

For example, the Court of Catanzaro [6], upon request by the Public Prosecutor, ordered the emergency blood transfusion on a child in a life-threatening condition, in consideration of the urgency of carrying out such a treatment without delay, in order to save the child’s life. The pediatrician of the hospital in which the child was admitted had notified the Public Prosecutor stating of the necessity to proceed with the emergency blood transfusion.

According to the Judges, the conduct of the parents, who refused to give their consent to the treatment for religious reasons, appears objectively to be prejudicial to the fundamental and vital interests of their daughter. Furthermore, the right to the free profession of one’s religious faith, protected by the Constitution, has an ultimate limit in the face of the inviolable individual rights to health and life, legitimized in Articles 2 and 32 of the Italian Constitution.

More recently, the Juvenile Court of Trento [7], faced with the case of the Jehovah’s Witness parents’ refusal to give consent to a blood transfusion for their daughter, seriously premature and in a life-threatening condition. In this case, the medical staff had forwarded notification of the child’s condition and of the fact that the child’s father had refused to give primary consent to the transfusion.

The judges adopted several measures to guarantee the wellbeing of the child. They judged necessary an emergency order in protection of the child and limiting the parents’ authority in relation to decisions concerning the medical treatment of the child; they ordered the child to be placed in the custody of the director of the department in which she was hospitalized, limited to the decisions to be made regarding the most suitable medical interventions, including transfusions.

The Judges stressed that although respecting the religious convictions of the child’s parents, based on the information provided by the doctors, it does not seem possible excluding transfusions, as well as to treat the child. Furthermore, they established that the doctor to whom the child is entrusted must bear the parents’ religious convictions in mind, always evaluating the possibility of medical treatment alternative to a blood transfusion.

In another case, blood transfusions had been carried out regularly on a female child affected by beta thalas-

semia major, who needed regular transfusions in order to stay alive, until her parents converted to the religious faith of Jehovah's Witnesses and, therefore, decided that they were no longer willing for their daughter to undergo the necessary blood transfusions. Therefore, when the child, summoned to the clinic for her essential transfusion, was not brought in, the medical staff notified the hospital directorate of the circumstances, underlining the fact that the treatment was essential to the child's survival. This led to the notification being made to the Juvenile Court by the hospital department social services.

In this case the Judges had issued several orders, over time, in response to every occasion of the parents' not bringing in their daughter for the necessary treatment, (removing the child temporarily from the family home and having her hospitalized in the medical institution, with the aim of carrying out the necessary blood transfusions; ordering the police to caution the parents by informing them of their civil and criminal liabilities in the case of them failing to allow their daughter to receive the necessary blood transfusions). The Judges finally issued an order demanding that the child be subjected to regular visits to monitor the planning and undertaking of the transfusions, with the aim of solving the problem definitively and to avoid having to adopt arduous measures in order to carry out every treatment, with the risk of delays at danger to the child's life.

Unfortunately this case tragically concluded with the death of the child. Some commentators [8] have underlined the fact that, in a case such as this, the Juvenile Court could have withdrawn or suspended the parents' parental authority, ordered the permanent removal of the child from the family home, investigated the possibility of her staying with other relatives during the periods between hospital stays or, failing that, sought at all costs a community organization available to provide accommodation and assistance. If treatment refusal results in a child suffering, parents may be criminally liable. In this case, the parents' conduct was the subject of a lengthy legal procedure [9-12] which resulted in them being convicted of manslaughter for having omitted to provide their daughter with the regular blood transfusions necessary to ensuring her survival.

4 Discussion

Thus, in the event that refusal by the parents, outside of emergency situations, exposes the child's health to serious risk, health workers must proceed by notifying the compe-

tent authority: Article 32 (Doctor's duties towards fragile patients) of the Italian Code of Medical Ethics (2014), having established that the doctor safeguards children, victims of any kind of abuse or violence as well as people in conditions of vulnerability or psychological, physical, social or civil fragility, in particular when he/she deems the environment in which the person lives to be inadequate to protect the person's health, dignity and quality of life, establishes that the doctor, in the case of the legal representative's opposition to interventions judged to be appropriate and proportionate, notifies the competent authority. Article 37 (Consent or dissent of the legal representative), after establishing that the doctor, in the case of a child or unfit patient, acquires from the legal representative informed consent or dissent to diagnostic procedures and/or therapeutic interventions, also underlines that the doctor should notify the competent authority of the opposition on the part of the informed child or whoever holds parental authority to treatment deemed necessary and, relative to the clinical conditions, proceeds, in any case and without delay, to administer treatment deemed essential and urgent [13]. Doctors must always evaluate the possibility of medical treatment alternative to a blood transfusion. Thus, if a minor's life is in danger because of a parental refusal to consent to blood transfusion, a court order for the transfusion may be granted, if there are no alternative treatments which may be medically viable and acceptable to the parents. Although Jehovah's Witnesses refuse blood transfusions, "accepting products *derived* from red cells, white cells, platelets or plasma is view as a decision that individual Witness patient must make for themselves" [14]: some commentators note in fact that "health-care providers should utilize a specific form that allows patients to choose the products, treatments and procedures that are acceptable to them" [14].

5 Conclusion

It can be concluded that, in Italy as well as in other countries, in the event of the refusal of blood transfusions for a child by his/her Jehovah's Witness parents, safeguarding the health of the child must be the guiding criteria in the decision-making process: "consideration should be given to parental views and treatment moderated when possible but if conflict occurs, the child's interests always come first" [3].

Conflicts of interest: The authors have no conflicts of interest to declare.

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