Consent to Treatment: a fundamental component of medical practice

These examples are provided to give physicians advice on how to deal with issues around consent that might arise in their practice.

By Lynn Kirshin
Policy Analyst

Mr. A had liver disease secondary to sclerosing cholangitis. His physician was concerned that without a liver transplant, Mr. A's condition would deteriorate over the next two years. The operation and the risks and potential complications of the donor (who was his daughter) and recipient surgery were discussed with Mr. A. The details of the procedure were in reference to a right lobe liver graft. Mr. A signed a consent form stating in part:

I…hereby consent to the performance upon me…of the operation or procedure of living donor transplant ordered by or to be performed by Dr. B and his/her surgical team, the nature and effect of which have been explained to me by Dr. B and are understood by me. I also consent to such further or alternative procedures as in the opinion of Dr. B are immediately necessary, and to the administration of any general or other anaesthetic for any of these purposes…

Usually the right side of the liver is used as the donor site, but in this case, when the surgical team attempted to harvest the liver sample from the donor, they discovered that, for technical reasons, it would be very difficult to take part of the right side out of the liver. The physicians determined, instead, that left-sided liver donation was possible.

Dr. B and another physician involved in the transplant met with Mr. A in the operating room receiving area where he was waiting to be taken to the operating room. Mr. A was not sedated at this time. Mr. A's wife was in the waiting area at this time. The physicians discussed the circumstances with Mr. A regarding the donor's biliary anatomy and the increased risk of biliary stricture if the right lobe of the liver was used. The physicians therefore recommended using the left lobe. Mr. A inquired about the safety for the donor and the physicians stated that using the left lobe would be safer for the donor under the circumstances they were encountering.* Mr. A then consented to the physicians proceeding with the left lobe transplant.

Did Mr. A provide informed consent?

Yes. In these circumstances, consent was freely given – there was no duress. Even though consent was given at the "operating door," as long as there was ample discussion about risks and benefits and the patient understood the information, there is no reason to suggest that consent was not freely given.

There is no absolute requirement that the physicians turn to the family for discussion, when they had the consent of the patient, and

* the donor's consent was captured in the consent form she signed before the surgery. Neither the mother nor she raised any concerns about the adequacy of her consent.

the patient had not requested input from anyone else. In this case, Mr. A was capable of giving consent and therefore there was no need for a substitute decision-maker.

Mr. C was admitted to hospital with acute lymphoblastic leukemia and profound anaemia. Upon admission, he advised staff that he would not accept blood products if that were to be part of the recommendations for treatment. He showed hospital staff an Advance Medical Directive which reflected this fact.

Mr. C was started on chemotherapy but his condition continued to deteriorate. Mr. C refused blood products on numerous occasions. One evening, his condition became life threatening due to a very low haemoglobin. His physician, Dr. D, discussed the issue of a blood transfusion with Mr. C and two family members who were present at the time. Dr. D explained the benefits of a blood transfusion in his condition, and the dangers of not getting the blood. Dr. D left Mr. C with his relatives for a short period of time so he could make a decision, after informing them that an answer was required soon because any further delay may have serious consequences to his health. When the physician came back in the room, he noted that Mr. C was alert and oriented and that in his opinion was competent to give him verbal consent. Mr. C informed Dr. D that he wished to have the transfusion. At this time, Mr. C was too weak to sign the consent form on the chart. Instead, Mr. C's relatives signed statements attesting to his willing acceptance of the transfusion, and later that evening Mr. C himself signed a written request for a transfusion. The physician documented Mr. C's request for a blood transfusion in his chart and proceeded with a transfusion.

Mr. C's condition improved considerably after the transfusion. At this point in time, Mr. C advised hospital staff that he did not want any further blood transfusions. No further transfusions were given to Mr. C.

Was valid consent obtained?

Yes. The central issue here is whether a patient can have a change of mind, and if this occurs at a time of critical illness, whether physicians should follow the most recent directive or honour those previously expressed directives. The patient's most recent wish should be the one which is adhered to by physicians as long as the patient is capable of giving consent at the time. In this situation, the physician found that Mr. C was capable of providing consent. The decision to proceed with a blood transfusion was contrary to the Advance Medical Directive. However, it is the last competent decision of the patient which is the decision that caregivers must follow. This same principle also applies when Mr. C changes his mind and refuses to accept any further transfusions.

The Consent to Medical Treatment policy was revised and approved by Council in September 2005. It is available on our website at www.cpso.on.ca under Policies.

MD