WHO IS THE DESIGNATED REPRESENTATIVE THE FAMILY OR THE CAREGIVER?

CLINICAL CASE

Manuel, 72 years old, suffers a stroke and is thus admitted to the hospital. He comes to the center accompanied by a woman who identifies herself as his usual caregiver, although she does not provide any documentation to prove it. In order to proceed with the admission process, the hospital administration asks the caregiver for the appropriate documentation to carry out the necessary procedures. Among the documents provided was Manuel's ID card. On the fifth day of admission, some of the patient's nephews asked to speak to the hospital director showing a complaint filed for occupation, regarding the use of Manuel's home by the caregiver and her family while he was in hospital. Immediately afterward, the caregiver presented a notarized document to the hospital management showing that Manuel granted her full legal powers. The medical management team consulted with the physicians responsible for the patient and they informed them that these powers of attorney were given while the patient was already hospitalized and, in their clinical judgment, the patient was not competent to grant such powers at that time, having signed them with his fingerprint. The next day, the physician stated to the facility director that Manuel may be discharged and that the caregiver had expressed her desire for him to go to his usual home under her care. However, the nephews inform the director that they are looking for an assisted living facility for their uncle and that they do not believe the caregiver should make that decision. Additionally, the physicians have doubts about the care he will be able to receive at home. In view of this situation, the hospital management decided to consult its ethics committee to clarify who the patient's designated representative and valid interlocutor is, since Manuel has been declared by medical opinion to not be of sound mind to decide. Should the patient be taken care of by the caregiver through the power of attorney or by his nephews and nieces, who are his closest relatives?

ETHICAL ANALYSIS OF THE CASE

The priority in this case must be the protection of a vulnerable patient and the pursuit of his well-being and safety, whether by family members or his caregiver. In any case, the primary issue is to seek what is in the best interest of Manuel. Limitations in decision-making should be recorded in his clinical history. Firstly, it is essential to respect Manuel's wishes and for this reason, it is necessary to: assess his competence, determine whether his incompetency is permanent or transitory (prognosis), whether he has registered prior instructions, and whether he had expressed his preferences to professionals. If he is found not competent, it will be necessary to identify the most appropriate proxy. It is important to keep in mind that when making decisions by proxy, the best interest of the patient should be sought.

POSSIBLE COURSES OF ACTION

- Conduct an assessment of the patient's competence and, if possible, explore his preferences.
- If feasible, estimate whether the patient can regain his competence and in what time frame.
- Identify whether there are any prior instructions or any indication in the medical records Manuel's preferences.
- Inform the caregiver because she has the legal powers to represent Manuel and make decisions on his behalf. If requested, discharge him to his home under the care of the caregiver.
- Inform the family, in the understanding that the powers of attorney are not valid. He will be discharged for transfer to an assisted living facility.
- Subsequent follow-up to see how the patient is evolving and assess whether additional legal measures are necessary.
- Refer the case to the competent court and not make a decision regarding the hospital discharge until the court's decision is known.
- Not give information to the caregiver or family members, either by telephone or in writing, until it is clear to whom the information should be given.
- Consult with the Social Worker.

RECOMMENDED COURSE OF ACTION

- The physicians and hospital management shall act at all times in the best interest of the patient. This principle will guide their decisions.

- Perform an assessment of the patient's competence and, if possible, explore the patient's preferences. Identify whether there are any prior instructions or any indication of preferences in Manuel's medical record.

- If feasible, estimate whether the patient can regain competence and in what time frame.

- Refer the case to the appropriate court and not make any decision regarding the patient's hospital discharge until the court's decision is known.

- Not give information to either the caregiver or family members, either by telephone or in writing, until it is confirmed to whom the information is to be given.

- Wait for the judicial body's decision before discharging Manuel. Extend his admission keeping him in hospital until the best destination for his discharge is determined.

- Bring the case to the attention of the social services to explore all available resources and carry out a follow up with the patient after discharge. Maintain coordination with social services at all times.

- Record all actions in the patient's medical record.

DISCUSSION

Although it is preferable to avoid the judicialisation of medical care, if the doctors conclude that Manuel was not in a position to grant power of attorney on the date he did, then in this case it would be advisable to bring the facts to the attention of the Court of Guard in order to assess who the legitimate representative of Manuel is, especially if there are doubts as to whether the caregiver is capable of providing Manuel with the care he needs. The Court should be consulted as to whether the power of attorney is valid and, based on this, decide who should be Manuel's representative. Pending a judicial decision (transfer to the home with the caregiver or to a nursing home, following the wishes of his nephews and nieces), in order to protect Manuel's well-being, his hospital admission should be maintained. It should be noted that if the doctors consider that Manuel was competent to sign the notarized document (meaning he was aware of what he was signing), the legal representative would be the caregiver.Regarding the other legal aspects (occupation of the home, alleged improper procurement of powers of attorney), these are problems that are beyond the competence of the clinicians and the management of the medical facility because legal action is already in process. Otherwise, if physicians (or any other professional) suspect or detect a possible crime, they have an obligation to report it. This is not a special duty of healthcare professionals, but a general duty as citizens.Whatever the final discharge destination is, it is recommended that the medical team coordinate with social services to explore all available resources and keep a follow up with the patient after discharge. This should be done for clinical reasons as well as from a social perspective.

Sgd.: ASISA-Lavinia Bioethics and Health Law Committee

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