Lavinia - ASISA Bioética
Comité de Bioética y Derecho Sanitario

The Refusal of Treatment … With a Risk to Third Parties

Clinical Case

A 35-year-old patient who has been an intravenous drug user for approximately the past six years required hospital admission eleven months ago for pyelonephritis. There was no other history of interest, he was not taking any medications at the time and he presented in good general condition on physical examination.

Due to risky sexual behaviors, the patient has had periodic follow-ups with the infectious diseases service for the past three years. Seven months ago he came to the clinic to pick up his STD results and learned of a positive serology for HIV. After giving the patient the news, the characteristics of the disease were described, and the therapeutic options and prognosis were explained. In addition, corresponding tests (CD4 count, viral load, etc.) were ordered and the patient was scheduled for an appointment two weeks hence. The patient did not undergo the tests nor appear for the scheduled consultation. Until that point, the patient had been coming sporadically for scheduled check-ups. However, it appears that he has decided to completely forego all follow-up.

Can the patient refuse follow-ups and treatment for a notifiable disease which has a risk of contagion to third parties, and should the physician respect the patient's decision to not be treated? In this case, does the physician have any additional responsibilities?

Ethical Analysis of This Case

In this case, the main conflicting issues are the patient's right to choose (in this case, to cease medical follow-up), the basic right to autonomy and the duty of care and professionalism of the physician.- Standard medical practice conceives that with appropriate treatment, future harm and suffering for both the patient and those in their environment including the risk of contagion to third parties could be avoided. Alternatively, should the patient's freedom to choose be respected, not only the patient's health, but perhaps the health of others, could be unnecessarily endangered. Add on to that the fact that the physician may fear legal repercussions in the event of contagion to third parties, which may influence their actions.

This case raises the issue of a possible refusal of treatment. With competent patients, they are required to furnish consent for all medical procedures to be performed. If the patient does not consent, this would be considered a refusal of treatment. For the refusal to be accepted, the following requirements must be met:

1. The patient must have been adequately informed about his or her state of health, the nature of the disease, the characteristics of the proposed procedure, the consequences to his or her health of a refusal of treatment, and possible alternatives.

2. The patient must be competent to make decisions, which implies that he/she is able to understand the information, comprehend it with respect to his/her values, make a decision and express said decision.
3. There is no risk to third parties or to public health.

If these requirements are met, the patient's wishes and right to autonomy should be respected. In order to properly make these decisions (including refusal), patients should receive comprehensive information about the process, including possible risks and available alternatives. Proper and complete information helps avoid patient refusal and reluctance. The information, which must be kept confidential, is conveyed as a consequence of the doctor-patient relationship. A trusting doctor-patient relationship with good communication facilitates the process and helps the patient make decisions.

In the event of a refusal of treatment, it is essential that all information and recommendations given to the patient- in this case, emphasizing the preventative measures the patient should take to avoid contagion to third parties -- are recorded in their clinical history file. The information contained in the patient's clinical history file is of great value for both facilitating health care and from a legal-medical point of view.

Possible Courses of Action:

- Respect the patient's decision not to undergo treatment or attend follow-ups and do nothing other than note the decision and incident discussions in the patient's file.
- Locate the patient and try to reschedule him/her for a new informative consultation regarding the disease.
- If/when located, assess the patient's competence to make decisions.
- Try to learn if the patient is continuing in risky sexual behaviors and if he/she has a steady partner.
- If the patient refuses to be treated, offer him or her the possibility of follow-up.
- If they do not want to be treated or have a follow-up in our center, offer the possibility of being treated in another center.
- If the patient cannot be located, contact family members or relatives to explain the problem and ask them to help us locate the patient for treatment. This is subject to the duty of medical confidentialy and the protection of patient privacy.
- Inform the courts of the situation so it may decide on initiating involuntary treatment due to the risk to public health, in accordance with the laws of each country.
- Be aware of legal ramifications that way attach to the health provider and/or the patient.

Recommended Courses of Action

- Attempt to locate the patient and reschedule the patient for a new informative consultation regarding the disease. Be aware that there could still be an unwillingness to accept the diagnosis and subsequently, a refusal of follow-up and treatment. In most cases of refusal, this is due to the patient's fears and apprehensions or because the information provided has not been adequate or properly conveyed. For this reason, it is a priority to resume communication with

the patient so that they may be better informed. Additionally, it is important to try to calm any fears, which may be unfounded. The patient should be thoroughly informed about the disease: transmission, evolution (if treated or untreated), therapeutic possibilities, the evolution of the disease, and the benefits of treatment. When informing the patient, the physician should make sure that the patient understands all the information provided.

- Involve professionals in the field of mental health and / or community care, who have the option of continuous and regular contact with the patient, as well as options to accompany him/her in the everyday life.
- Try to learn if the patient is continuing to engage in risky sexual behaviors and if he/she has a stable partner. Inform them about ways to prevent transmission to third parties.
- Inform the patient there may be legal consequences for failing to disclose their health status.
- If the patient is located, the patient's competency to decide during the consultation should be assessed. If the patient is competent, once he/she has been adequately informed, his/her decision should be respected.
- If despite the information provided, the patient continues to refuse treatment, the physician should offer him/her: the possibility of a follow-up even if not treated, referral to another center, and even the possibility of palliative measures in the future- depending on the evolution of the disease. It must be remembered that refusal of treatment does not mean the abandonment of a patient, so the best possible alternatives and continuing treatment and follow up should be offered.
- In some countries this condition is considered to be a reportable disease that must be declared to the public health authorities because of the risk to third parties. This may prove to be an exception to the patient's right to freedom and respect of their right to choose. In this cases AFTER SECURING COMPETENT and WRITTEN LEGAL ADVICE, involuntary treatment may be considered due to the risk to public health.
- The clinician should make him or herself aware of all legal constraints applicable in his or her jurisdication.

Sgd.: ASISA-Lavinia Bioethics and Health Law Committee
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