

“My parents are divorced. Who will make decisions for me?”

Clinical Case

Pedro is 7-years-old. His parents have been told by the school that he is a very “lively” child, and the teachers regularly complain about his behavior. After a mental health assessment by a psychologist and a psychiatrist, Pedro is diagnosed with attention deficit hyperactivity disorder (ADHD). After careful evaluation, they recommend two therapeutic options; psychotherapy sessions, or psychotherapy sessions in addition to pharmacological treatment. Pedro’s parents are divorced and the court has established joint custody. Pedro’s mother prefers to start the pharmacological treatment together with the psychotherapy as she feels psychotherapy on its own will not suffice. However, the father prefers to delay the start of pharmacological treatment as he is concerned about the possible side effects of the drug. He wants to give the psychotherapy sessions a chance, and only if those sessions are unsuccessful, would he agree to pharmacological treatment. The mental health team is unsure in this case of who should make the decision regarding Pedro’s treatment since the parents are divorced but share joint custody.

Ethical Analysis of The Case

The patient is a minor and thus requires proxy consent. Whenever, possible the minor should be informed about their situation and the process, adapting the information as needed so that they understand. Regardless, the decision must be made by their legal representatives, who in this case, are both parents. When parents are separated or divorced surrogate decisions can become complex, particularly when they do not agree on what is best for the child. If, as in this case, both parents have joint legal custody, then both parents must consent to any medical procedure or treatment.

In decisions made by proxy, an important ethical nuance must be taken into account: the proxy decision must always seek what is in the best interest of the represented party, in this case, the 7-year-old minor. The decision must be solely focused on what is best for Pedro’s health, and what will be of greatest benefit to him, while at the same time ensuring the least possible harm (side effects and risks). In extreme cases, if the proxies make a decision that is clearly detrimental to the health of the minor, the medical team may consider not carrying out the proxy’s decision, justifying it on the basis of protecting the minor’s health.

Possible Courses of Action

- Given that the parents cannot come to a mutual agreement, refer the case to another center.
- Instruct Pedro's parents to return to the office once they have reached an agreement regarding Pedro's treatment.
- Analyze all the different therapeutic options with the care team, and assess which would be best for Pedro.
- Begin with psychotherapy like the father pointed out, and if it is not effective then add the pharmacological treatment.
- Interview the parents individually to confirm that both of them understand all the treatment options, including what the benefits are and any possible complications.
- Attempt to have a joint consultation with both parents where you can deliberate with them on the best possible treatment for Pedro. Give them some time to try to reach an agreement.
- If the parents cannot reach a consensus after the consultation then advise the parents to inform the appropriate judicial authority so that they may assess what treatment should be prescribed for Pedro according to the opinion of the experts.
- Given the discrepancy in opinion between both parents, inform the appropriate judicial authority and seek immediate action.

Recommended Courses of Action

- First, discuss the different therapeutic options with the care team and assess what the best option for Pedro is. The care team should do this by carefully re-evaluating the case and looking at the alternative treatments to determine whether any of them might be more beneficial or more harmful.
- Second, whenever possible, try to have a joint consultation with the parents to help them deliberate and try to reach an agreement. If the care team determines that one treatment option is preferred over the other then this should be explained to the parents so that they understand the reasons as to why this is the best option for Pedro. Allow the parents to take some time to try and reach an agreement.
- If a joint consultation is not possible, hold a separate one with each parent to confirm that they have received all the information they need to make the decision and that they understand both the benefits and potential complications of each of the options.
- Pedro should be informed throughout the decision-making process. The situation should be explained to him in an adaptable and understandable way so that he may comprehend it to the best of his abilities.
- Lastly, if the parents are unable to reach a consensus after their consultation then inform them that the appropriate judicial authority should be informed so that it can assess what treatment is best for Pedro according to the opinion of experts. This intervention by the judicial authority should be carried out as a last resort.

Discussion

- Decision-making for children of separated or divorced parents is often hindered by the parent's relationship. Although it is not the function of the care team to intervene in family dynamics, when a child is being negatively affected due to the conflict between their parents, we must try and help them reach a consensual decision that is in the best interest of the child.
- Keeping the patient's well-being in mind, it is advisable to go through the decision-making process jointly with the parents where they put aside their conflicts and the focus is on the common goal.
- Although in these situations it is preferable to have a joint consultation it might also be necessary to meet with the parents individually. While separate consultations are ordinarily not preferred as the parents then might use the separate information to suit their own objectives- sometimes these can be useful to address personal and valid concerns the individual parent might have which they may feel inhibited to raise in the presence of the other.
- In extreme cases, where the parents are unable to reach an agreement due to their personal conflicts – or due to genuine beliefs that the treatment favored by the other parent is not in the child's best interest, it may be necessary to request authorization from the appropriate judicial authority before carrying out the treatment that is determined to be the most beneficial for the child. This should be used as a last resort, among other reasons because it could be detrimental to the minor. Various reasons exist for avoiding judicial intervention if possible. These include cost, delay, pitting one parent against the child –if the child favors the treatment supported by one of the parent and making the child the center of a legal dispute.
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Sgd.: ASISA-Lavinia Bioethics and Health Law Committee
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