

Law and Psychiatry

Pregnant Patients' Refusing Medical Care

WILLIAM H. REID, MD, MPH

Psychiatrists are often asked to consult when other physicians' patients refuse important procedures. Such a referral sometimes leads to complex discussions of competence, understanding of the procedure, appreciation of consequences, and the like. On the other hand, some referring physicians, usually well-meaning, just want the psychiatrist to say the patient is "incompetent," clearing the way for the doctor or hospital to do what they think is best. We must stick to our task of objective evaluation and participation in the process of weighing patients' rights and wishes against what the doctors believe is necessary care.

I want to share several days' postings on this topic to my Behavior Online forum (<www.behavior.net> then click on "Law, Ethics, and Psychotherapy"). They tell a story not only of the legal and ethical issues, but of how the forum participants (mostly nonmedical mental health professionals) think about what we do. I've edited the responses a bit, but not very much.

Anon (a psychiatry resident). I work with a Texas hospital mental health consultation team. An obstetrician asked us to evaluate a Jehovah's Witness patient who is 6 months pregnant and has a very low hemoglobin. It is so low that she is having serious medical problems and may well die without blood transfusions, which she refuses. (Jehovah's Witnesses believe receiving transfusions is a very serious sin.) I can't find any evidence of incompetence such as psychosis, delusions, or severe depression. We get a lot of consult requests where the surgeon or obstetrician would like for patients to be declared incompetent so their refusal of needed treatment can be overridden, and we do the assessment, but in this case the issue seems to be devout but, in my opinion, misguided religion rather than mental dysfunction or disorder. The obstetrician is consulting with other doctors about this, but it seems to me he should be going to a judge. The woman is extremely fragile. I can see letting her decide about her own treatment, but this involves an unborn child. She would not be allowed to control the treatment of a 'born' child if it put the child in danger.

Anon II. This seems to be a Constitutional issue in two ways: the right to privacy and freedom of religion.

Psychology and psychiatry are being used in an attempt to circumvent these basic rights. Scary.

Anon. But does any right or freedom of religion give a person the right to kill other people (e.g., children) without some good reason (e.g., self-defense), even in the name of God? I need to point out that this is not an abortion issue. The mother says she loves her baby (which is what she calls her fetus) but that if she dies and the baby dies, it must be God's will. She is 6 months along in the pregnancy, and I think Jehovah's Witnesses are very opposed to abortion anyway.

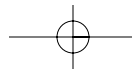
Anon II. I think that the doctors approached this as a psychological issue because they knew that they would have a very difficult time persuading a judge to challenge someone's Constitutional rights. In that sense, you are being used.

If you look at this in the way that the mother might (I am unfamiliar with the beliefs of this religion), that this is God's will, then she is not killing the child. God will take care of her and her child. It's her right to practice her beliefs in this country.

You say that the mother wants the child, and from this particular point of view, this is strictly an issue of religious choice. Invoking the abortion issue only confuses and complicates it. However, this is the way that you are looking at it. She is risking the life of, perhaps killing, an unborn child. Yet that isn't the issue here.

Step away from the abortion issue, and step toward the religious issue. Entertain the idea that God may possibly intervene. Count your blessings or your luck that we are fortunate enough to have choices in this country that are covered by the Constitution, and that rights are sometimes enforced in this country.

Dr. Reid is a forensic and clinical psychiatrist in Horseshoe Bay, Texas, and a past president of the American Academy of Psychiatry and the Law. He maintains an educational website, *Psychiatry and Law Updates*, at <www.reidpsychiatry.com>. His most recent book is *Treating Adult and Juvenile Offenders With Special Needs* (edited with Bruce D. Sales and Jose Ashford, Washington, DC: APA Books). This column contains general clinical and clinical-forensic opinions which should not be construed as applying to any specific case, nor as any form of legal advice.



LAW AND PSYCHIATRY

And, also realize that many acts that may seem unjust, unfair, and/or damaging are allowed to happen to a few so that most of us can enjoy some basic freedom and some basic rights.

This woman is very courageous in many ways, and in what may become a tragic sacrifice, she will ensure that life continues in this country with a little freedom. Don't let that go. It's very easy to lose.

S. B. I'm no lawyer, but last time I checked, human sacrifice was not a protected form of worship.

Reid. Exactly, S. I read Anon's comment to mean that this is indeed different from an abortion issue, and that he/she was separating the two.

Surgeons, obstetricians, etc., are often trying to use mental health professionals when they ask them to evaluate patients who are refusing medical procedures such as surgery or blood transfusions (usually, in my experience, because they are trying to help their patients, not just run roughshod over their rights). The consulting psychiatrist or psychologist should be aware of this, but should also keep in mind 1) that one tenet of successful consultation is "be helpful to the referral source, or you won't get called very often" and 2) that the point of the mental health consultation exercise is to do a quality evaluation and report the results accurately.

Taking Anon at his/her word, and assuming he/she did a competent evaluation, the issue is really a legal one about what a competent person can do with her life and the life of an unborn child. I'm not aware of any jurisdiction in the United States that allows parents to physically harm their children in the name of religion (if you don't count male circumcision, I suppose, which I don't—call me inconsistent, but the two cases are hardly comparable). In Texas, we occasionally even arrest parents who drive without putting their children in seat restraints.

I am almost certain a Texas judge would force the treatment on the mother. This is not a new issue. It has been litigated, and taken to appellate courts, many times in cases concerning parents and their children's infections, vaccinations, transfusions, cancer treatment, juvenile diabetes, etc., and involving at least Seventh-Day Adventists, Jehovah's Witnesses, Christian Scientists, fundamental Moslems (re: female circumcision), and maybe even those nasty infant sacrifice cults that make such great television plots. I can't quote any on pregnant women and protection of a late-term fetus, but I'd bet the cases are out there and were generally decided in favor of the fetus.

Finally, I do give credit to people who live their faith devoutly when the going gets tough. That's

when it matters. But parents are there to help and protect, not hurt or kill, their kids.

S. B. The Herculean task of law and ethics is always trying to balance intent vs. consequences. Anon II seems to be saying that because the mother has "noble" intent, it's okay. What about the consequences to the child? It's 6 months along, correct? Viable outside the womb?

What is it they say about "the road to hell" Recently, here in Northern California, we had a case of a mother feeding bleach to her children because she thought they were possessed by the devil. Pretty noble intentions, if that's the side you want to take.

As for doctors "using" mental health, #@*! By and large, mental health professionals give their opinion only after careful training, extensive experience, and careful examination of the facts and research. We have no motive to give an opinion other than what we believe to be true. You will go out of business very fast if you are not professional, thorough, and objective.

I would be willing to argue that the mental health status of a woman willing to ignore the primal instincts of our species (protect the young, self preservation) is an alarming and completely valid concern. She is essentially committing suicide, and taking her baby with her.

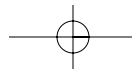
Reid. Probably not viable at 6 months. However, the principle applies, I think, to significant endangerment, not just outright killing.

I just read about a case in Massachusetts (August, 2000, I think) in which a judge jailed/institutionalized a pregnant woman to keep her from killing her fetus for "religious" reasons. The article didn't say whether or not she was also found mentally ill, but it did say she had heard her fetus speak to her. The fetus told her he/she did not want to be "killed like the last one." I don't have any other details.

And within the past month, I interviewed a patient who appeared to have forcefully (traumatically) induced labor in her home at about 8–9 months of pregnancy, then—so far as I can tell—killed the infant by beating her head against a bathroom fixture. My guess is that the baby would have voted to be protected.

(a few days later)

Anon. The patient is receiving some non-transfusion treatment. The doctors are prepared to go to the judge if it doesn't work. Thank you everyone for your advice. Most of it supported what I thought was



right, even though I am not the person who makes the decision.

S. B. I read an interesting article this morning about a Colorado couple who let their 2-day-old baby die from a hole in his heart. Doctors say this could have easily been repaired had they brought the child to the hospital when he became symptomatic.

These are not Jehovah's Witnesses nor Christian Scientists, but some other similar organization. Two other couples belonging to this religion have already been convicted of involuntary manslaughter for similar incidents.

I am a big fan of evolutionary psychology. My question, purely for discussion and exploration, is this: Would you consider someone who ignores (or is capable of ignoring) the defining instincts of our species as being mentally ill? Why or why not? We've often heard people say of murderers that "to do something like that, he must be crazy." Does this apply here?

I can see good arguments on both sides but I have a hard time getting around one point: Where do we derive the right to allow our children to die? Are children property, ours to do with what we wish? If so, then why should we have laws against incest or child abuse?

Reid. Interesting question. There has been another case in the media as well, in which a couple failed to take their child to a doctor/hospital after he was badly stung by wasps. When they finally took him, it was too late and he died. They believed (if one believes the media reports) that medicine is the work of the devil or something like that. As I understand it, the reason the couple were not tried for felony child abuse was that they convinced the judge or prosecutor (I don't recall which) that they had tried to do something to help their child (with wet compresses, etc.), and had not simply ignored his needs.

Saying that people who ignore (suggesting a voluntary act) the "defining instincts of our species" are always mentally ill seems dicey, though it may often be the case. (That treads heavily on the religious and philosophical concept of free will.)

Not possessing those defining instincts in the first place (or being biologically predisposed to avoid them through, say, some brain difference) suggests an evolutionary (and ultimately biological) defect to me, though I might not call it an illness (the law and the DSM generally consider a "defect" to be different from a "disease"). That view would seem obvious if the defect or condition tended to decrease survivability, eventual reproduction, and/or survivability of the next generation to reproductive capacity.

S. B. I bring up the issue of "children as property" because it seems to be the only other explanation besides mental illness. If people are going to argue that they are in full control of their faculties and are making a "religious freedom" choice, it seems that's the only defensible position (and one I personally find noxious).

In terms of the ability to "ignore" instincts, perhaps "ignore" isn't the right word. Certainly, biological mechanisms affect our behavior toward others. I'm thinking particularly about attachment disorders, which, in my humble opinion, do not get enough attention or respect.

Another part, I must confess, is my own repulsion at the idea of watching or participating in my own child's death. If my daughter has a cold, I want the best ENT on the planet! I recognize this is my own bias, one I believe has biological/evolutionary roots. I feel this duty to protect in my muscles, in my cells, in my bones.

I guess my point is this: If the person not getting medical care for her sick child is not mentally ill, and we do not accept the premise that children are property, and we do not accept human sacrifice as a protected form of worship, what is left?

Manslaughter.

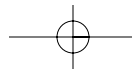
M (graduate student). You make some strong points, S. I was once invited to a sweat lodge, and one of the women that was there declined to go in. She had just found out she was pregnant, and as much as she valued her spiritual beliefs, she couldn't risk the health of her unborn child. She put it this way: "I can't make that decision for my child."

Unfortunately, there are religions that don't value that same sense of self-direction and individuality. But the question remains: How are we as a nation of laws supposed to determine when a particular religion's tenets violate human rights? I agree with you, but where do you draw the line?

S. B. I suppose the short answer is to draw the line at physical safety.

Emotional harm is murkier, yet important nonetheless. That's where we as mental health professionals need to speak up. I'm very surprised at how often public policy seems to be made without any input or guidance from mental health professionals. Neglect, and its long term effects, might be one example.

I think interventions are made even more difficult given the dynamics of child abuse. The massive amount of denial encountered with abusive parents is well documented. Are religious groups simply engaging in another form of denial (e.g., "It's God's



LAW AND PSYCHIATRY

will"? For a great example, check the "Mothers Against Munchausen Accusations" website (I think it's <www.mama.com>). Basically, it's a group who claim that factitious disorders are made up by doctors and therapists to cover their own incompetence. I guess hospital videotapes of mothers injecting their children with urine and bleach are part of the cover-up!

I suppose the harsh truth is that many laws, in the end, are arbitrary. Why age 21 to drink alcohol? Why not 20? or 22? We should do the best we can to incorporate the knowledge we have gathered through research and serious study, apply it, and hope the resulting laws are based on science, not emotion.

A few days later

Anon. New feedback. The patient responded to the non-transfusion IV treatment and was discharged from the hospital with instructions to come back if there are more problems. I hope she will. The judge is prepared to provide a Court Order if the fetus is in dire trouble later. I hope that doesn't keep her from coming back.

THE LAST WORD

Several weeks later

Anon. The mother is back in the hospital, extremely anemic and in need of transfusions, which both she and her husband refuse to consider. She is receiving non-blood "plasma expanders" intravenously and being observed in the ICU. The doctors have warned her that she may lose considerable blood during the birth (which is coming very soon), and she has directed them not to give her transfusions if that happens.

Reid. Thanks for the update. I hope things go well. Would anyone like to comment on whether or not a new mother has a right to refuse lifesaving treatment when her death would deprive her infant of an optimal chance for good neonatal health and development?

[PER JOHN OLDHAM: "I think a more substantial concluding narrative from Bill is called for, thoughtfully reflecting about the issue."]