

**Case:**

You are seeing patients in the emergency department when two police officers arrive and show you their proper identification. The identification is legitimate. The officers inform you that they are performing an investigation into one of your patients on charges of driving under the influence of alcohol. The patient is in the ER following a motor vehicle accident. They ask if you checked a blood alcohol level, which you *did* as part of the routine workup, and they ask if it was above the legal driving limit of 0.8, which it was. What should you do?

- A) Give them the results, since the patient broke the law by drinking with an alcohol level above the legal limit
- B) Ask them to sign a release for the chart
- C) Tell them you cannot show them the chart unless there is a signed release from the patient
- D) Tell the nurse who is caring for the patient what the results were, out loud, so that they can hear yet you are not violating confidentiality

**Answer:**

C) Tell them you cannot show them the chart unless there is a signed release from the patient

**Explanation:**

You cannot release a patient's medical records unless there is a signed release from the patient or there is a court order, warrant, or subpoena. This is true no matter who is asking. All information contained in a patient's chart should be considered the property of the patient<sup>28</sup>. While you may morally disagree with not informing the police about someone who was driving while intoxicated, you cannot legally inform anyone outside of the patient.

It is permitted to violate confidentiality in order to protect the health or well-being of a third party, such as when a patient does not disclose a history of HIV or tuberculosis to others. In such cases the AMA has advised that physicians should, within the constraints of the law, attempt to persuade the infected patient to cease endangering the third party. If persuasion fails notify authorities, and if authorities take no action then notify the third party<sup>29,30</sup>.

**Case:**

A 60 year old patient with lung cancer develops respiratory failure and is intubated. He previously named his best friend as durable power of attorney. His friend believes the patient would have wanted his life support withdrawn based on a recent conversation about test results. However, the patient had also made a living will stipulating that all measures should be undertaken to maintain his life. The patient's son believes his father's living will reflects his wishes and wants everything done to maintain his life. What should you do?

- A) Appoint the son as durable power of attorney since he is the next of kin, and follow his wishes
- B) Keep the patient on life support in accordance with the patient's living will
- C) Respect the decision of the durable power of attorney and withdraw life support
- D) Use 'substituted judgment' to determine what the patient would have wanted in such a case

**Answer:**

C) Respect the decision of the durable power of attorney and withdraw life support

**Explanation:**

This is truly a gray area of medical ethics. So much so that Kaplan states a durable power of attorney can override a living will while UWorld claims the opposite. The majority consensus is that the appointed durable power of attorney supersedes even a living will<sup>31</sup>. The patient, in good state of mind, believed that his friend would make decisions with which he would agree. It is always appropriate to facilitate a discussion between people involved in making end of life decisions, but it is unethical to try to make the choice for them. In the rare circumstance when there are two conflicting documents then the more recent document will outweigh the older one. Circumstances may have changed since the patient made his living will (he could have been diagnosed with metastatic disease for instance) – therefore the durable power of attorney carries the responsibility of making the decision that he thinks best fits what the patient would have made given the current situation.

**Case:**

A patient was driving on an expired driver's license when he is involved in a fatal car accident. According to his license he wished to be an organ donor. Family cannot be reached and you must make a decision of whether or not to allow the harvesting of his organs as this is a time-sensitive decision. What should you do?

- A) Accept the organs as the patient had expressed his wishes
- B) Decline him as an organ donor candidate as his signed consent (driver's license) has expired
- C) Accept the organs using the 'substituted judgment' standard

**Answer:**

B) Decline him as an organ donor candidate as his signed consent has expired

**Explanation:**

In cases where you have to make a time-sensitive decision and don't have the luxury of continuing attempts to contact family members, you should treat the license as a consent form. And any form that has expired is no longer valid. Substituted judgment has no place here – you can never remove organs from a patient without consent from either the patient or his next of kin.

**Case:**

A 35 year old female who is 6 weeks pregnant presents to your clinic asking for referral for an abortion – she has three children already and was going to schedule a tubal ligation when she discovered she was pregnant. You agree to refer her to a specialist, but while filling out her paperwork you receive a call from her husband. He pleads with you to not refer her for an abortion, informing you that the patient has schizophrenia. The patient does not appear delusional and is not having any hallucinations, but her medical record does indicate that she carries a diagnosis of schizophrenia. What should you do?

- A) Have the patient undergo a psychiatric evaluation before referring her for an abortion
- B) Inform the patient that you cannot refer her for an abortion due to her medical history
- C) Refer the patient for an abortion
- D) Inform the patient that you cannot refer her for an abortion due to her lack of competency to make decisions
- E) Ask the ethics committee for help in making a decision

**Answer:**

C) Refer the patient for an abortion

**Explanation:**

Having a diagnosis of schizophrenia does not automatically make one incompetent. Competency is typically determined by the legal system (usually with input from psychiatrists who can perform a competency assessment<sup>32,33</sup>). Capacity, on the other hand, is what a patient must possess in order to make medical decisions for themselves. There is nothing in this question to suggest that the patient lacks capacity. Patients with psychiatric diagnoses still have a legal right to make decisions for themselves. The patient has a right to autonomy – she has not made any statements which should raise suspicion.

**Case:**

A 12 year old child and his mother are involved in a serious motor vehicle accident. The child is found to have a liver laceration and is hypotensive. The mother has a pelvic fracture and also appears to have internal bleeding. Both will require blood transfusion to survive. The husband rushes into the emergency department and presents cards indicating that each member of the family is a Jehovah's witness and that it is against their religion to accept blood. What should you do?

- A) Given that this is a life threatening emergency, transfuse both patients as needed
- B) Transfuse the child but not the mother
- C) Transfuse the mother but not the child
- D) Respect their religious wishes and do not transfuse either patient

**Answer:**

B) Transfuse the child but not the mother

**Explanation:**

State v. Perricone: Denying medical care to a child is not within the parents' First Amendment right of freedom of religion: "The right to practice religion freely does not include the liberty to expose...a child...to ill health or death. Parents may be free to become martyrs themselves. But it does not follow that they are free...to make martyrs of their children..."<sup>34,35</sup>

Therefore, in life threatening situations, persons over the age of eighteen can make a choice and the physician must abide by it (so long as the person has capacity to make decisions). In emergency cases where a person is unresponsive or consent cannot be obtained, 'implied consent' allows physicians to treat accordingly. With regard to minors, the legal guardian may withhold treatment so long as the decision is not life or limb-threatening.

Note that the answer choice might include the option to call a parent to obtain consent in case of a life-threatening injury to a child. In such cases this is still the wrong answer as consent is unnecessary and will only delay care.

**Case:**

A 45-year-old woman is brought to the hospital by her husband. The patient complains of severe abdominal pain and has right lower quadrant tenderness. She is taken to the operating room with a presumptive diagnosis of appendicitis. Surgery reveals that the appendix is normal and without inflammation. However, you notice a large tumor attached to the patient's right ovary. At this point what is the best next course of action?

- A) End the surgery
- B) Excise as much of the tumor as possible without coming into contact with the ovary
- C) Exercising 'standard of care', remove the patient's ovary to eliminate the tumor
- D) Seek consent from the patient's husband, who is sitting in the waiting room
- E) Talk with the patient's husband, who is in the waiting room, about how his wife would probably want to proceed and use 'substituted judgment'

**Answer:**

A) End the surgery

**Explanation:**

A competent patient has the right to make all treatment decisions for themselves, including refusal of treatment. After the woman recovers from anesthesia, she is entitled to full informed consent including descriptions of the nature of the procedure, the purpose or rationale, the benefits, the risks, and the availability of alternatives<sup>36</sup>. With this information presented, the patient herself can make whatever treatment decision seems best to her. If she were in a coma of some duration, then we might ask the husband under the doctrine of 'substituted judgment'. But in this case she can wake up and be asked directly.

If the opposite situation were true; wherein the patient was undergoing elective surgery for removal of an ovarian cyst (for instance), but an acutely inflamed appendix was discovered – the appendix could be removed as allowing it to remain could lead to perforation/sepsis. Such a case would constitute a true medical emergency and the physician would be permitted to act without first waking the patient and obtaining consent again.

**Case:**

A 30 year old HIV-positive woman gives birth to a healthy baby boy. She had no prenatal care. The child undergoes an HIV test which is positive. The mother is clearly excited about the birth and appears very loving – she is constantly holding the baby and kissing him every chance that she gets. When told of the infant's HIV results, the new mother appears oblivious, and says that she will just have to “be an even better mother to help get through this.” She asks for advice while breastfeeding. The physician tells her that breastfeeding is not advisable, to which she replies, “I know that breast milk is best, and my baby deserves the best.” How should the physician respond?

- A) “I’m glad you are taking such good care of your baby. I’ll schedule an appointment with the lactation consultant.”
- B) “If you breastfeed your child, the courts can remove the child from your custody.”
- C) “If you really want what is best for your child, you will not breast-feed.”
- D) “Breastfeeding increases the risk of transmitting HIV to your child - you cannot do it.”
- E) “It’s great to see how happy you are – why don't we talk more about these things after you’ve had some rest.”
- F) “Let me explain. A positive test when the child is this young is not definitive. But if you breastfeed your child, you greatly increase the chances of your child contracting HIV.”

**Answer:**

F) "Let me explain. A positive test when the child is this young is not definitive. But if you breastfeed your child, you greatly increase the chances of your child contracting HIV."

**Explanation:**

Approximately 25% of untreated women with HIV will transmit the virus to their baby<sup>37</sup>. All children of HIV-positive mothers will *test* positive at birth due to the mother's antibodies. Women who are HIV-positive should not breastfeed as that can increase the chances of congenital transmission by a significant degree. Courts do have legal precedent to remove children from the custody of mothers who insist on breastfeeding<sup>38</sup>. Making sure the mother knows this is essential. Your choice of words is also important. Direct commands are not the best option. Instead, explain the reasons for the recommendation in a way that makes clear the risk to the child.

**Case:**

A 30 year old woman who was diagnosed with tuberculosis gives birth to a healthy baby boy. The woman has received no prenatal care. She asks about advice while breastfeeding as she knows that is what is best for her baby. The physician tells her that breastfeeding is not advisable, to which she replies, "I know that breast milk is best, and my baby deserves the best." The physician's response should be which of the following?

- A) "I'm glad you are taking your new responsibilities so seriously. I'll schedule an appointment with the lactation consultant."
- B) "If you insist on breastfeeding your child, the courts can remove the child from your custody."
- C) "Let me explain. If you breastfeed your child, you greatly increase the chances of your child contracting TB."

**Answer:**

C) "Let me explain. If you breastfeed your child, you greatly increase the chances of your child contracting TB."

**Explanation:**

There are certain situations in which a mother should refrain from breastfeeding due to potential risks to her newborn. This includes mothers who are HIV positive, are undergoing chemo or radiation therapy, have untreated active tuberculosis, or are using illicit drugs<sup>39-41</sup>.

**Case:**

Parents bring their 15 year old daughter to the emergency department. They are suspicious that she has been sexually active with her 16 year old boyfriend, and request that you do a pelvic exam and urine pregnancy test on her. The patient, who is in high school and still lives with her parents, doesn't say much until you ask her about doing a pelvic exam, at which point she replies, "I'd rather you didn't..." What is the most appropriate course of action?

- A) Respect the minor's wishes, and defer all testing unless she consents
- B) Perform the urine pregnancy test but inform the parents that you cannot do a pelvic exam without consent
- C) Perform the pelvic exam but inform the parents that you cannot do the pregnancy test without consenting
- D) Inform the patient that since she is still a minor, she must comply with her parents' request

**Answer:**

A) Respect the minor's wishes, and defer all testing unless she consents

**Explanation:**

Typically, when a child refuses care (for instance a five year old who doesn't want sutures) – the parents can override and there isn't much of a dilemma. Problems arise when an adolescent refuses care. The refusal of care should be respected under the 'mature minor doctrine', as the fifteen year old is considered old enough to understand her actions. She certainly understands the nature and purpose of the examination. State law supports the minor when presenting for issues related to sexually transmitted diseases, contraception, and pregnancy<sup>42</sup>.

**Mature minor doctrine:**

The authority to consent or refuse treatment for a minor has traditionally remained with a parent or guardian. Over the years, courts have gradually recognized that children younger than eighteen years who show maturity and competence deserve a voice in determining their course of medical treatment. A minor who is found able to understand short and long-term consequences is considered to be "mature" and thus able to provide informed consent/refusal for medical treatment. The minor is authorized to make decisions regarding his or her medical treatment as long as the following criteria are met: age > 14, capable of giving informed consent, treatment will benefit, treatment does not pose a great risk, and treatment is within established medical protocols. Although not every state has a mature minor doctrine, courts have recognized the need to look at certain case laws involving the ability of mature adolescents to make medical decisions<sup>43</sup>.

**Case:**

A 23 year old is in a serious motor vehicle accident and is pronounced brain dead. It is unclear whether he was registered as an organ donor as his driver's license is not available and you must make a time-sensitive decision on whether or not he is a viable donor. His wife is unclear what he would have wanted, but she herself is a donor so she consents. Before anything can be done, his parents arrive and inform the doctors that they've never heard him discuss the issue of organ donation before and they would prefer that he not be made a donor. The wife has stepped out and is unavailable so you cannot get both parties together to discuss. You make every effort to try to get both parties together but cannot. What is the most appropriate course?

- A) Accept the wife's consent and notify the organ donation network
- B) Accept the parents' declination and do not notify the organ donation network
- C) Make contact with the patient's siblings to help make a decision

**Answer:**

A) Accept the wife's consent and notify the organ donation network

**Explanation:**

This would be a good case for an ethics committee to be involved with, but the legal answer is to accept the wife's consent<sup>45</sup>.

The Uniform Anatomical Gift Act (UAGA) governs organ donation for the purpose of transplantation. The UAGA has created a very specific hierarchy of who can give consent for donation.

The order of people who may provide consent:

- ☐ The donor him or herself
- ☐ Spouse
- ☐ Adult Children
- ☐ Parents
- ☐ Adult Siblings
- ☐ Adult Grandchildren

**Case:**

A 15 year old male comes to the clinic for his high school physical. His mother sits in the waiting room while you do the exam. Before you finish, the patient confesses that he thinks that he may be homosexual. He requests that you not tell his mother. When you finish the exam, his mother re-enters the room, and asks, "So, did you find anything? Everything a-okay??" How should you respond?

- A) Inform the mother of what he has told you, and encourage discussion between the two
- B) Tell her that everything is fine, but notify her later as she is the legal guardian and has a right to know. By not telling her in front of him, you maintain a strong relationship with him
- C) Inform the mother that everything was fine and maintain confidentiality with the teenager
- D) Encourage the adolescent to tell his mother, but if he does not, then bring it up on your own

**Answer:**

C) Inform the mother that everything was fine and maintain confidentiality with the teenager

**Explanation:**

The physician should not tell the boy's parents about his homosexual thoughts. He should encourage the patient to discuss his feelings with his mother, but in all areas dealing with sexual behavior, the minor has a legally protected right to confidentiality.

The truth is that many adolescents are not comfortable talking to their parents about controversial topics such as sex, drugs, peer pressure, etc. Studies show that adolescents are less likely to seek healthcare for sensitive issues if they believe that their parents will be informed<sup>50</sup>. Many adolescents are unaware of their right to confidentiality, therefore physicians should discuss this with both the patient and their parents at their first visit so that everyone is aware of it. Limitations with regards to confidentiality should be explained. Parents and patients need to also understand that if the adolescent poses a threat to self or others, confidentiality may be broken.

**Case:**

You are working in the emergency department when a patient comes in with a complicated laceration to his hand. You notify the orthopedic surgeon who comes down to see the patient. After examining and diagnosing him with a tendon laceration, he discovers that the patient is HIV positive. The surgeon asks that you refer him to another consultant, as he does not want to risk infecting himself by caring for this patient. Is he within his legal rights to refuse the patient?

- A) Yes, so long as it is not a life-threatening situation physicians may refuse to see whomever they wish
- B) Yes, while it is unethical to refuse a patient he is within his legal means
- C) No, since the physician has formed a patient-physician relationship, he cannot abandon them unless it is outside his scope of practice
- D) No, he is violating the principle of non-maleficence

**Answer:**

C) No, since the physician has formed a patient-physician relationship, he cannot abandon them unless it is outside his scope of practice

**Explanation:**

Generally speaking, you should care for all patients that you find appropriate for your level of expertise. Refusing patients on any basis – be it racial, religious, sexual orientation – will open you up to scrutiny from the judicial system, ethics committee, and your colleagues. Moreover, once a doctor-patient relationship has been established, a physician cannot refuse to treat unless something falls outside of his scope of practice. To do so could be considered abandonment – if a physician wishes to terminate a relationship with a patient (for noncompliance for instance) the patient should always be notified well ahead of time so they are able to establish care with another provider. Ending such a relationship should be done both in person and through the use of a notarized letter so that there is no question about it.

The AMA has made it very clear: “A physician may not ethically refuse to treat a patient whose condition is within the physician's current realm of competence solely because the patient is seropositive for HIV”<sup>51</sup>.

At the same time, a physician must *voluntarily* enter a relationship with a patient and cannot be forced to accept new patients. This applies to cases in which a physician feels his clinic is overbooked or is wanting to decrease his workload so he declines new patients – so long as it is done without prejudice it is wholly acceptable.