

# Parental authority and child's welfare in the discourse of medical treatment in compliance with religious beliefs

Władza rodzicielska i dobro dziecka w dyskursie leczenia  
zgodnego z przekonaniami religijnymi



Kamila Kocańda<sup>1</sup> , Patrycja Pańtak<sup>2</sup>, Przemysław Wolak<sup>1</sup> 

<sup>1</sup>Institute of Medical Sciences of the Jan Kochanowski University in Kielce, Kielce, Poland

<sup>2</sup>Faculty of Law, Canon Law and Administration, The John Paul II Catholic University  
of Lublin, Lublin, Poland

## Abstract

In this article, the case of a child whose life depended on parents' decision made in compliance with religious beliefs will be presented. The child's health was life-threatening, and an immediate procedure for transfusion of blood and application of hematopoietic products was required. The parents being aware of the immediate threat to their child's life and the fact that she could die demanded that the physicians discontinue the treatment of internal bleeding in accordance with the current medical knowledge. The welfare of a child should be put above the religious values of his/her parents. When it is necessary for a physician to undertake urgent medically justified medical procedures, when a delay caused by the procedure for obtaining consent would pose a threat to patient's life, serious injury or serious health impairment, the physician may proceed without the consent of the patient's statutory representative or substitute consent of the competent guardianship court. A physician has no obligation to wait for substitute consent of a guardianship court also in a situation where he/she is obliged by it to search for alternative methods of treatment, which, in the light of current medical knowledge, are not included in the category of methods and ways of preventing, diagnosing and treating diseases available for the physician.

Key words: parental authority, substitute consent, blood transfusion

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## Introduction

Parental authority is one of the key institutions of family law. It is inseparable from a child's welfare and his/her protection. The best interest of a child in the process of

applying the law is a supreme value that is the basis for regulating all relationships among the child and his/her family and society. In this article, the case of a child whose life depended on parents' decisions made in compliance with religious beliefs will be presented.

Address for correspondence: Doctor of Juridical Science Kamila Kocańda, Instytut Nauk Medycznych, Uniwersytet Jana Kochanowskiego, ul. IX Wieków Kielce 19, 25–317 Kielce, Poland, e-mail: kamila.kocanda@gmail.com

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A female minor, a victim of an accident, was urgently admitted to the Department of Paediatric Surgery, Urology and Traumatology of one of the local hospitals in the Świętokrzyskie Province. The child was admitted to the ward due to severe abdominal trauma, a ruptured spleen, and an intra-abdominal haemorrhage. The child's health was life-threatening, and an immediate procedure for transfusion of blood and application of hematopoietic products was required. Both the child and her parents were Jehovah's Witnesses whose religious beliefs categorically forbid transfusions of blood and blood-like products. The parents being aware of the immediate threat to their child's life and the fact that she could die demanded that the physicians discontinue the treatment of internal bleeding following the current medical knowledge.

Given the above-mentioned circumstances, the hospital applied to the court for a decision on the granting of a substitute consent to perform a medical service for a minor patient in the form of a blood transfusion. In response, the family court obliged the physicians to issue an opinion in which they would indicate whether the minor's blood transfusion is the only effective therapeutic method, and the treatment without blood would not be enough and would not allow for achieving the desired result, and to inform whether the minor could be transferred to a hospital capable of treating the child in a way her parents wish.

### Parental authority, child's welfare

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A child cannot deal with their own affairs personally, he/she must be placed under the care of other people. From the earliest times, this function has been assigned to parents and in most legislations is called parental authority [1]. Parental authority, as results from the entirety of the provisions of the Family and Guardianship Code, especially from the provisions of the articles 95 (1), 96, and 98 (1), constitutes the entirety of the obligations and rights to the child, intending to protect his/her best interests [2]. The Family and Guardianship Code does not contain a definition of parental authority. In Art. 95 (1) of the Family and Guardianship Code, a reference to the indication of the elements of parental authority was only made and, at the same time, there is a stipulation that the attributes of this authority specified in the provision are not exhaustive. Based on the applicable provisions, it should be stated that parental authority covers all the rights and obligations of parents towards the child, which serve to care for the child and his/her property, as well as to raise the child with respect for his/her dignity and rights for the good of society following his/her talents [3].

There is no legal definition of a child's welfare. This concept has not been defined during judicial decisions.

As emphasised by the Supreme Court in one of the judgments, filling the notion of "child's welfare" with content should be made in specific factual circumstances, especially if they indicate a situation in which a child found himself/herself, requiring interference by other entities, including the court [4]. Significance of the category of the best interests of the child varies depending on the specific situation or factual circumstances. In the doctrine, a child's welfare is defined as a complex of material and non-material values necessary to ensure the proper physical and mental development of a child [5]. It is worth emphasising that it is impossible to create a legal definition of the concept of a child's best interests, which will directly indicate the conditions for meeting this principle, hence the lack of this definition allows acting more widely in the process of interpreting and applying the law [6].

### Discussion

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In the light of current medical knowledge, in a clinical case of such kind being examined in the court, blood transfusion is the only effective method of treatment that guarantees the avoidance of severe damage to health or even death. The minor's health condition was so serious that the medical treatment without blood was a real threat to her life and health and would not result in her recovery. In the opinion of the medical staff of the hospital which carried out the diagnostic and treatment procedure for the patient, the above-mentioned methods of treatment constituted the standard of current medical knowledge; therefore, it was not possible to indicate another entity that could provide an alternative treatment for the child following the will and religious beliefs of her parents.

As provided by the legislator in the provision of Art. 4 of the Medical Professional Act, a physician is obliged to practice by the indications of current medical knowledge, methods and ways of preventing, diagnosing and treating diseases available to him/her, according to the principles of professional ethics and with due diligence. In this respect, it seems important to refer to the category of available methods and ways, while availability should be understood in its medical, organisational, and economic dimensions. The obligation to apply current medical knowledge, confronted with the concept of available methods and ways of treatment, excludes the need to look for any therapies or medical procedures available anywhere that are "newer" than the still current standard of medical procedure, and thus release physicians from the need to search for alternative methods of treatment for at all costs and until the end. Nevertheless, one should not ignore the fact that the elements of the therapeutic instruction include not only informing the patient about the proposed but, at the same time, possible diagnostic methods.

It does not mean, however, the necessity to provide them on their own, unless they are required by the organisational standard of the payer of services guaranteed in a public medical entity or the applicable standards of the medical procedure resulting from the relevant ordinances of the Minister of Health or evidenced-based medicine.

According to the provision of Art. 34 (6) of the Act on the professions of physician and dentist [7], if the statutory representative of a minor patient is incapacitated or unable to give a conscious consent to a physician to take measures necessary to eliminate the risk of the patient losing his/her life or seriously injured, or seriously disturbed health, the physician may perform such measures after obtaining the consent of the guardianship court. In the analysed case, the physicians issued an appropriate request for the guardianship court to issue a substitute consent for providing a medical service, and the court obliged them to seek alternative methods of treating the child by the parents' will. In a decision of 27 October 2007, the Supreme Court ruled that patient's statement, expressed in the event of loss of consciousness, specifying his/her will concerning the ways of conduct by a physician towards him/her in therapeutic situations that may arise, is binding for the physician if it is clear and unambiguous [8]. However, the above applies to cases where the author of such a declaration of will is an adult and non-incapacitated patient. Therefore, such guidelines cannot be applied in the case of deciding the fate of a minor by his/her legal representatives. As indicated by the Court of Appeal in Warsaw in its judgement of 13 February 2013, performing a procedure without the patient's consent, which causes damage, is a culpable act. Performing a procedure without a patient's consent, especially in the case of procedures involving a higher risk, is a violation of the basic physician's obligations specified in the provisions of law [9]. In the light of the circumstances, in this case, the necessity to take and execute the necessary medical decision was particularly difficult, because the physicians faced the need to reconcile the risk of loss of life or health with the lack of consent to urgent and justified medical procedures as well as insufficient support from the entity legally established to issue a substitute consent for surgery in the best interests of the child.

## Conclusions

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Both parents have a parental authority that is inextricably linked with the child's best interests. In formal

and legal terms, it lasts until a child is eighteen years old. Parents raise a child under their parental authority by ensuring him/her physical and mental development. This institution should be performed with respect for the best interests of a child, which is the supreme value in Polish family law. The welfare of a child should be put above the religious values of his/her parents. When it is necessary for a physician to undertake urgent medically justified medical procedures, when a delay caused by the procedure for obtaining consent would pose a threat to patient's life, serious injury or serious health impairment, the physician may proceed without the consent of the patient's statutory representative or substitute consent of the competent guardianship court. A declaration of will of an adult and a non-incapacitated patient who refuses to give consent to a life-saving medical procedure, unless it raises doubts as to its authenticity and that it is expressed consciously and after obtaining comprehensive therapeutic instruction, is binding for a physician. However, in a situation where the refusal to consent to this type of medical procedure, the omission or culpable deferral of which would endanger a patient with a risk of loss of life, serious injury or serious health impairment, concerns a procedure or surgery for a minor patient, a physician is not bound by the objection of statutory representatives and should request the guardianship court to issue a substitute consent for a given medical procedure. What is more, if a delay related to obtaining a substitute consent from the court would expose the patient to negative health effects in the form of loss of life, serious injury or serious health impairment, the physician may perform the procedure without the substitute consent of the guardianship court. A physician has no obligation to wait for substitute consent of a guardianship court also in a situation where he/she is obliged by it to search for alternative methods of treatment, which, in the light of current medical knowledge, are not included in the category of methods and ways of preventing, diagnosing and treating diseases available for the physician.

## Conflict of interest

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None.

## Streszczenie

W niniejszym artykule zaprezentowano przypadek dziecka, którego życie zależało od podjęcia zgodnej z przekonaniami religijnymi decyzji rodziców. Małoletnia pacjentka, będąca ofiarą wypadku, została przyjęta do kliniki chirurgii dziecięcej, urologii i traumatologii jednego z miejscowych szpitali w województwie świętokrzyskim w trybie pilnym. Stan zdrowia dziecka zagrażał jego życiu, wymagana była natychmiastowa procedura przetoczenia krwi i preparatów krwiotwórczych. W sytuacji gdy odmowa wyrażenia zgody na tego rodzaju procedurę medyczną, której zaniechanie lub zawinione odroczenie groziłoby pacjentowi niebezpieczeństwem utraty życia, ciężkiego uszkodzenia ciała lub ciężkiego rozstroju zdrowia, dotyczy zabiegu lub operacji względem małoletniego pacjenta, lekarz nie jest związany sprzeciwem przedstawiciela ustawowego i winien zwrócić się do sądu opiekuńczego o wyrażenie zgody zastępczej na daną procedurę medyczną przez ten sąd. Jeżeli jednak zwłoka związana z uzyskaniem od sądu zgody zastępczej narażałaby pacjenta na negatywne skutki zdrowotne w postaci utraty życia, ciężkiego uszkodzenia ciała lub ciężkiego rozstroju zdrowia, to lekarz może wykonać powołaną procedurę bez zastępczej zgody sądu opiekuńczego. Lekarz nie ma obowiązku oczekiwać na zastępczą zgodę sądu opiekuńczego także w sytuacji, gdy jest przezeń obligowany do poszukiwania alternatywnych metod leczenia, które w świetle aktualnej wiedzy medycznej nie znajdują się w kategorii dostępnych dla lekarza metod i środków zapobiegania, rozpoznawania i leczenia chorób.

Słowa kluczowe: władza rodzicielska, zgoda zastępcza, transfuzja krwi

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