ISSUES IN MEDICINE

Parental refusal of blood transfusions for minor children solely on religious grounds — the doctor’s dilemma resolved

David McQuoid-Mason

Parental refusals of blood transfusions

It is common knowledge that if a doctor wishes to overrule a refusal by parents to consent to a blood transfusion for their child the doctor can always approach the High Court as the upper guardian of all minor children. A recent High Court judgment has now held that a refusal by parents to consent to a life-saving blood transfusion for a minor child solely on religious grounds is unconstitutional,1 and therefore unlawful.

In *Hay v B*,1 Dr Hay, a paediatrician, had applied to the High Court for an urgent order allowing her to give a life-saving blood transfusion to a baby against the wishes of the parents. The parents opposed the doctor’s application on the grounds that blood transfusions were contrary to their religious beliefs and that they were concerned about the risks of infection associated with blood transfusions. In her application Dr Hay stated that although there was no guarantee that the baby would survive if it received a blood transfusion, if it did not it would probably die. She also said that it was highly unlikely that the transfused blood would be contaminated.1

The High Court found that the concerns about infected blood were unwarranted and granted an immediate order authorising the doctor to give the baby a blood transfusion. It subsequently gave a judgment in which it stated that: (i) in terms of the Constitution2 a child’s ‘best interests’ were of paramount importance; (ii) the right to life in the Constitution3 is a basic constitutional value and the baby’s right to life could not be violated; (iii) while the parents’ religious beliefs had to be respected, and their concerns were understandable, they were not reasonable and justifiable and could not override the baby’s right to life; and (iv) the interests of the baby in receiving the blood transfusion outweighed the reasons given by the parents for opposing it.1

As the High Court has held that during a medical emergency it is a violation of a child’s constitutional rights for parents to withhold consent to a blood transfusion solely for religious reasons, and that such a limitation is not reasonable and justifiable in terms of the Constitution, it is submitted that doctors should regard such refusal of consent as unlawful. Therefore the common law rules regarding emergency medical treatment should apply.

Emergency medical treatment

The Constitution provides that nobody may be refused emergency medical treatment.4 The common law states that in emergency situations medical treatment may be given without the consent of the patient, or persons legally competent to give consent on behalf of the patient, provided it is not against the consent of the patient or such other persons.5 However, if the refusal to consent to treatment during a medical emergency is unlawful (e.g. refusing to consent to a life-saving blood transfusion for a minor child solely on religious grounds), the doctors should refuse to comply, and proceed with the treatment. In such instances the conduct of the doctors would not be regarded as going against the consent of the patient, or the persons competent to give consent on behalf of the patient, because the refusal to consent is in itself unlawful. For instance, the recognition of such an unlawful refusal of consent to save a child’s life or to prevent the child suffering serious injury or disability during a medical emergency would be against public policy and unconstitutional.3

Therefore, if during medical emergencies doctors are refused consent by parents or guardians to treat young children who are incompetent to consent for themselves, and this is done solely on religious grounds, the doctors should counsel the parents or guardians that their conduct is unlawful, and advise them that while the doctors will try to respect their religious feelings, if medical treatment is necessary to save the child’s life, or to prevent it suffering severe physical injury or disability, such treatment will be undertaken without their consent. Where the grounds for refusal are solely based on religion it is no longer necessary for doctors to seek a court order to overturn the parents’ refusal as such refusal is unlawful. The parents may seek a court order to prevent the doctor from saving their child’s life, but where their refusal is based solely on religious grounds they will not succeed.
We reviewed patients with herpes zoster ophthalmicus (HZO) seen at the Irrua Specialist Teaching Hospital and the Central Hospital in Benin City, Edo State, Nigeria, for a period of 10 years from July 1993. Of the 44 HZO patients, 28 (64%) were HIV-positive, 7 (16%) were HIV-negative and in 9 (20%) the status was unknown. Most patients (89%) who were HIV-positive were below the age of 50 years, while those who were HIV-negative (71%) were generally above the age of 50 years. This is a clear deviation from the past when HZO was seen mostly in the elderly.

Herpes zoster results from recrudescence of latent varicella zoster virus from the dorsal root of cranial nerve ganglia present since primary infection with varicella (chickenpox). The commonest causes of varicella recrudescence are decline in cell-mediated immunity related to age, reduced immunity associated with some malignancies such as lymphoma, treatment of malignancies with chemotherapy or radiotherapy, HIV infection, and use of immunosuppressant drugs (such as steroids) after organ transplant surgery or for disease management. HZO occurs when the recrudescence is in the ophthalmic branch of the trigeminal nerve. It presents as vesiculo-bullous dermatitis on one side of the face, usually involving the scalp. The infection is distributed along the ophthalmic division of the trigeminal nerve and does not cross the midline. Involvement of the tip of the nose is significant because it implies involvement of the nasociliary nerve and such cases usually involve the cornea on the same side (Fig. 1).