

The Gold Foundation Seminar Series: Ethics for Lunch - Determining a Mother's Medical and Ethical Rights Over her Fetus and Newborn: Do They Change and, If So, When?

On March 4, 2008 at the Gold Foundation Ethics for Lunch Seminar Series, Dr. John Lorenz presented a very challenging case from the Children's Hospital of New York (CHONY) Ethics Committee. The case began with a 42 year old woman who entered the hospital with vaginal bleeding of unknown cause. Upon examination, the physicians found that she was between 24 and 26 weeks pregnant and the bleeding was due to a partial placental separation. The woman had been completely unaware she was pregnant and stated that she did not want to continue the pregnancy. At this late stage in pregnancy, however, an abortion is no longer an option under New York State Law.

The fetus had hydrops fetalis (total body edema) due to an atrial flutter which was causing congenital heart failure. The doctors presented the woman with the option of taking digoxin which could help save the life of the fetus. The woman refused and further stated that if she gave birth to this child she would like to sign a DNR order and have the physicians only administer comfort care. Dr. Lorenz posed five questions for the audience to consider throughout the presentation:

- Is the mother functioning as a legitimate service giver and surrogate?
- Can she ethically and legally refuse the drug?
- Who should make decisions once the baby is born since she appears not to be acting in its best interest?
- Are resuscitation and aggressive treatment in the best interest of the baby, once it is born?
- Furthermore, can one person's autonomy (the mother's) outweigh and decide the fate and autonomy of another's (the fetus)?

Dr. Lorenz asked the audience to consider the options. We do not know and cannot know if the fetus is viable, but does the fetus have personhood, i.e., awareness and an ability to participate? This is an obvious no. Dr. Lorenz then asked if the fetus had a future of personhood, to which there was a possibility? He presented the example of a comatose adult patient. This patient has no awareness and is unable to participate, but the patient still has rights. Therefore, although these patients may not be "people" in the sense of personhood, they still have undeniable rights. Would it then be justifiable to get a court order, incarcerate the mother and make her take the medicine against her will? The mother showed no signs of instability or mental problems, the hospital just did not like the choices she was making. To the medical staff, it did not seem acceptable for the mother to refuse the medications when they were of no risk to her. The mother did not seem to be functioning as a legitimate surrogate decision maker for her fetus.

An option for a hospital in this situation would be to get a court-ordered "Therapeutic Intervention for Fetal Indications." Before pursuing this course, the ACOG committee on Ethics recommends that certain criteria be met. These criteria are:

- Will maternal refusal of intervention pose a risk of harm to the fetus?
- Will intervention in all likelihood minimize potential harm to the fetus?
- Is less intrusive intervention available?

In this particular case, the answer was yes each time. The last question is whether intervention poses insignificant risk to the mother and may even benefit her? This point was a bit more problematic, as the court would be the one to decide if there is an insignificant risk. Due to the

fact that there was a slight chance the mother could develop an arrhythmia, albeit unlikely, it could be viewed as significant to the mother's health, and the courts would probably not rule in favor of forcing her to take the medication. Overall, Dr. Lorenz concluded that it would be obligatory to override the mother's opinion and that it was his obligation to do so, because the benefit to the fetus is so great and the burden for the mother so low.

In pediatrics, the doctors have an independent and professional obligation to advocate in the best interest of the child. Only in extraordinary circumstances, when it is clear the parent's decision is not in the best interest of the child, should a doctor step in and attempt to override parental decisions. In pediatrics, specifically the Division of Maternal Fetal Medicine, the fetus is considered a patient and decisions are weighed based on the benefits and burdens to the mother and fetus, both current and future. The decisions that you make regarding the medical care of the fetus affect the mother both medically and physically. The success of pregnancy is dependent upon the treatment and success of correcting the arrhythmia. There will be consequences for the child even if the arrhythmia is corrected, as pregnancy continues. At this point in the pregnancy, neurological injury may already be present, even if the hydrops fetalis is resolved. The risk of neurologic injury increases as the duration of atrial flutter increases. Additionally, during labor, more complications may arise for the fetus and aggressive treatment may be immediately necessary as well as continued intensive care.

Dr. Lorenz questioned "Why do we give the parents such control over the fetus?" He responded by explaining that parents are the ones who have to deal with the consequences of the birth of the baby and its life thereafter. In most cases, the parents will be the ones to determine what is in the best interest of the fetus since they will be responsible for creating an environment to help the baby. The more that society limits the control the parents have, the more society will have to take on dealing with the consequences. The problem with this, however, is that our society is not willing to take on such responsibility.

The next issue posed by Dr. Lorenz, was whether intensive care was in the best interest of this baby. The prognosis for the fetus was not great. In such cases, it becomes a matter of whether you're a believer in the sanctity of life or a proponent of considering quality of life. This fetus had a strong likelihood for a bad quality of life ahead of it, should it make it to delivery. How bad must the prognosis be for the quality of life for the fetus, before it does not justify burdening the mother? Is it even ethically right to be considering quality of life?

A mere 3 weeks after leaving the hospital, the mother gave birth to the baby and surprisingly immediately asked for her baby to be resuscitated. Ironically, she had been fighting all along against intervention; however, once she recognized the infant as her child, she wanted to save it. Tragically, the baby did not survive.

Dr. Lorenz concluded by explaining that as a medical caregiver, all you can do is make sure the mother has been given enough information to make an informed decision. If it is believed that either the mother does not understand the situation, or you as the doctor do not agree with or understand the decision of the mother, you are obligated to ensure that the mother has all of the necessary information to make an informed and justifiable decision.