Unconventional Treatment Requests: Should Requests for Female-Only Care Providers Be Accommodated?

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INTRODUCTION

Consider this case: a 36-year-old woman, gravida 4, para 3, presents to a tertiary care maternity hospital in labour at term with a cervix dilated to 4 cm. The fetal presentation is occiput posterior with head deflexed. The woman's previous deliveries were uneventful, spontaneous vaginal deliveries.

On admission, the woman (who has capacity) gives decision-making authority for all aspects of care to her husband. After cervical dilatation has progressed to 9 cm, the fetal heart rate tracing shows variable decelerations, which mandate consultation with an obstetrician. The only obstetrician available is male, and when he arrives the patient's husband refuses to allow his wife to be examined, stating that "we both believe that three deaths (his own, her father's, and her brother's) will occur if a man sees my wife's skin."

Some patient expectations for care can lead to unexpected difficulty within the care trajectory, including unconventional requests for how treatment is delivered. Using the example of requests for female-only care providers, we outline the legal issues involved (standard of care, consent, and human rights); the ethical analysis required (harm and due process); and a decision-making framework, which was developed by the authors with input from multidisciplinary clinicians and managers at a quaternary level perinatal centre. We believe that the framework will also be helpful for physicians in private practice.

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Standard of Care

Concerns about standard of care are often raised in response to requests to alter how treatment is delivered. Providing quality care and ensuring compliance with the standard of care are essential. It is often possible to accommodate unconventional treatment requests and still meet the standard of care. Options for doing so should be thoroughly reviewed. From a legal perspective, when determining whether a physician has met the standard of care, a court considers the standard of professional care and skill that would reasonably have been provided by a physician in similar circumstances.

Steps to identify divergent expectations and potential treatment requests at an early stage should be considered; these would include informing patients at the outset that care providers may change depending on who is on call.

Consent

In the case described, the male obstetrician does not have consent to examine the patient. To meet legal consent requirements, the most responsible physician should listen respectfully to the patient's wishes, confirm that she understands any risks associated with refusal to allow care to be provided by a male obstetrician, and ensure that her refusal is not coerced. If undue influence by the spouse is a concern, it may be appropriate to ask the patient's spouse to leave the room briefly while consent is obtained. In the

absence of consent, the patient's wishes to refuse treatment provided by a male obstetrician must be honoured. These discussions and decisions should be fully documented.[1,2]

Human Rights

Provincial, territorial, and federal human rights legislation prohibits discrimination on a number of grounds with respect to services or facilities customarily available to the public, which generally include health care or medical services. The British Columbia *Human Rights Code*, for example, prohibits discrimination on the basis of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, or age.[3] Respect for human rights and prohibition against discrimination are also reflected in the Canadian Medical Association's Code of Ethics, Article 17.[4] The Society of Obstetricians and Gynaecologists of Canada's Position Statement "When a patient asks for another physician on cultural or religious grounds" includes the following: "[m]any procedures and services are time sensitive or may become so without warning. Provision of these services cannot and should not ever be based on gender, race, sexual orientation, age, practice pattern or religious affiliation of either the patient or the provider. Hospitals, facilities and on-call groups should not be expected to provide alternative care providers for these services."[5] We argue that it is important not to simply dismiss a request for an alternative care provider; a fair process for assessing the request is important, and some requests for alternative care providers should be accommodated.

Requests for female-only care providers can arise from religious beliefs,[6] cultural beliefs,[6] and/or physical or psychological reasons. An example of the last would be having a history of sexual abuse. A universal rule that care is provided only by the obstetrician on call could therefore have a discriminatory effect linked to one of the grounds protected by human rights legislation, including religion, place of origin, and/or disability. Requests that are reasonably based on a protected ground must be accommodated to the point of undue hardship. Undue hardship is assessed on a case-by-case basis and requires proof of more than mere disruption or inconvenience. Factors that must be taken into account include financial costs, health and safety risks, and the size and flexibility of the workplace. Because undue hardship must be proven, a rigorous, evidence-based process for considering unconventional requests and whether they can reasonably be accommodated is recommended. It should be noted that male care providers also have the right not to be discriminated against with respect to employment on the basis of gender, which is a factor to be taken into account in the accommodation process.

To avoid violating human rights legislation and to comply with the Canadian Medical Association Code of Ethics,[4] physicians should give due consideration to unconventional treatment requests, canvass options that would address the patient's concerns (which in this case may include seeking permission to consult with the patient's religious advisors), and ensure that all individuals involved have been treated respectfully. This includes communicating with members of the relevant health care team and providing them with the opportunity to understand why a particular request is or is not being accommodated. It is essential to try to understand the meaning and importance of the request to those making it, to objectively evaluate the rationale for accommodating or refusing the request, to communicate respectfully, and, if at all possible, to provide appropriate time for adequate communication, decision-making, and exploration of various options. Documentation of the process of decision-making is also recommended.

Harm and Due Process

From an ethical point of view, to determine whether unconventional treatment requests should be accommodated, the following four questions must be answered.

What are the foreseeable harms that can be reasonably anticipated?

In this context, the nature, probability, and severity of the harm involved must be examined. Harm can be physical, psychological, and/or emotional and may range from harm that is serious, permanent, and likely to harm that is not serious, not permanent, and not likely. When requests for female-only care providers are made, potential harms include death of or injury to the patient and/or fetus, psychological and/or emotional harm to the patient and/or family members if the patient and/or fetus is harmed, cultural and/or religious repercussions to the patient/family that may result if the patient is cared for by a male, psychological/emotional harm to other patients who may as a result lose access to their female care providers,[7] moral distress for care providers, and reputational and possibly financial harm to the institution if faced with complaints or lawsuits.

Who is potentially harmed?

In the case described, the patient, fetus, family members, other patients, care providers, and/or the institution might be negatively affected (harmed) by a decision about female-only care. In other cases, it is equally important to distinguish whether the harm is to the patient only or whether the harm is to others, including family members, other patients, health care providers, and/or the institution. Deciding to pursue a harmful treatment path that only involves self-harm is a choice that may be made by capable