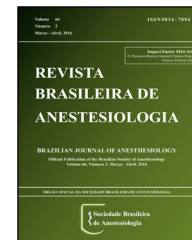




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SCIENTIFIC ARTICLE

Ethical and legal duty of anesthesiologists regarding Jehovah's Witness patient: care protocol

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KEYWORDS

Anesthesiology;
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Abstract

Background and objectives: Jehovah's Witnesses patients refuse blood transfusions for religious reasons. Anesthesiologists must master specific legal knowledge to provide care to these patients. Understanding how the Law and the Federal Council of Medicine treat this issue is critical to know how to act in this context. The aim of this paper was to establish a treatment protocol for the Jehovah's Witness patient with emphasis on ethical and legal duty of the anesthesiologist.

Content: The article analyzes the Constitution, Criminal Code, resolutions of the Federal Council of Medicine, opinions, and jurisprudence to understand the limits of the conflict between the autonomy of will of Jehovah's Witnesses to refuse transfusion and the physician's duty to provide the transfusion. Based on this evidence, a care protocol is suggested.

Conclusions: The Federal Council of Medicine resolution 1021/1980, the penal code Article 135, which classifies denial of care as a crime and the Supreme Court decision on the HC 268,459/SP process imposes on the physician the obligation of blood transfusion when life is threatened. The patient's or guardian's consent is not necessary, as the autonomy of will manifestation of the Jehovah's Witness patient refusing blood transfusion for himself and relatives, even in emergencies, is not forbidden.

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PALAVRAS-CHAVE

Anestesiologia;
Bioética;
Direito;
Transfusão;
Hemoderivados;
Sangue

Dever ético e legal do anestesiologista frente ao paciente testemunha de Jeová: protocolo de atendimento

Resumo

Justificativa e objetivos: Os pacientes testemunhas de Jeová recusam transfusão sanguínea por motivos religiosos. O anestesiologista deve dominar conhecimentos jurídicos específicos para atender esses pacientes. Entender como o direito e o Conselho Federal de Medicina tratam essa questão é fundamental para saber agir dentro desse contexto. O objetivo deste artigo foi estabelecer um protocolo de atendimento do paciente testemunha de Jeová com ênfase no dever ético e legal do anestesiologista.

Conteúdo: O artigo analisa a Constituição, o Código Penal, resoluções do Conselho Federal de Medicina (CFM), pareceres e jurisprudência para entender os limites do conflito entre a autonomia de vontade da testemunha de Jeová em recusar transfusão e a obrigação do médico em transfundir. Baseado nessas evidências um protocolo de atendimento é sugerido.

Conclusões: A resolução do CFM 1021/1980, o Código Penal no artigo 135, que classifica como crime a omissão de socorro, e a decisão do Supremo Tribunal de Justiça sobre o processo HC 268.459/SP impõem ao médico a obrigação de transfusão quando houver risco de vida. Não é necessário concordância do paciente ou de seu responsável, pois não é proibida a manifestação de vontade do paciente testemunha de Jeová ao recusar transfusão sanguínea para si e seus dependentes, mesmo em emergências.

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Introduction

Jehovah's Witnesses patients refuse blood transfusion.¹ They claim religious impediment based on a literal interpretation of the Bible. Inclined to spread their beliefs, this American movement grows significantly. Thus, the medical care of members of this denomination is growing increasingly in hospitals,² some in need of emergency blood transfusions. Based on decisions made by the Brazilian Judiciary in the Constitution, Penal Code, Code of Medical Ethics, and resolutions of the Federal Council of Medicine (CFM), we elaborated an anesthetic care protocol of Jehovah's Witnesses who need transfusion.

Initially, we will address concepts of bioethics important for understanding the subject. Then we will review the jurisprudence and finally present a protocol suggestion for this situation.

Freedom of choice and manifestation of will

In its Article 5, the Constitution³ guarantees full freedom to the Brazilian citizens. This constitutional guarantee is reflected in the principle of freedom of choice. Clinically speaking, manifestation of will is understood as the patient's choice for a form of treatment or even of no treatment.⁴ Examples of patient's will are the decision to continue smoking despite facing a lung problem or the option of a patient to get pregnant even with coexisting illnesses that imply life-threatening during pregnancy or childbirth.⁵

The manifestation of will makes the decision of the patient public. In this sense, Article 22 of the Code of Medical Ethics⁶ states: "The physician shall: not fail to obtain the patient's or his/her legal guardian consent after informing him about the procedure to be performed, except in cases of

imminent risk of death". As stated, consent is a requirement for elective medical practice.⁴ Usually, the patient signs a term declaring to be aware of the medical procedure and its corresponding risks and takes them willingly. This is the manifestation of will most used routinely. Another way of manifestation of will is the Jehovah's Witnesses refusal to receive blood transfusions.

Judicial doctrine states as valid requirements of the manifestation of the will: capable agent, object not prohibited by the law, and in a manner prescribed by law.⁷ Fulfilled these criteria, the Jehovah's Witness patient manifestation of refusing blood transfusion is absolute. This right is based on the Brazilian Constitution³ (Article 5, Section II) that guarantees: "No one is obliged to do or refrain from doing something except by virtue of the law". As there is no legal provision in the law requiring someone to consent to any treatment, no need to agree to be submitted to blood transfusion.⁷

Legal regulation of blood transfusion

Strictly speaking, law refers to the rule issued by the legislative power. Within this concept, there is no legal or constitutional provision regulating the obligation of blood transfusion in Brazil.⁸ However, the Federal Council of Medicine, as well as the Regional Council of Rio de Janeiro (CREMERJ), issued a resolution on the subject. By having constitutional provision, some authors consider that the medical councils' legislative and regulatory power emerge from the Constitution itself.⁹ Its resolutions are not laws in the strict sense, but have the force of law. Thus, the resolution of CFM 1021/80¹⁰ states in its conclusion:

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