

## ETHICS CASE

### Should a Physician Comply with a Parent's Demands for a Forensic Exam on a 16-Year-Old Trauma Patient?

Commentary by Michelle Bowdler, MSPH, and Hannah Kent

#### Abstract

Physicians must remain vigilant about their ethical duties to patients, especially in high-stakes situations. The question raised by this case—whether a physician should comply with a parent's demand for treatment against her underage child's wishes—is not one of life or death in which a guardian might more credibly argue her judgment should stand. Given that forcing a rape kit exam on a patient who refuses to give assent could be further traumatizing, we argue that the physician should not comply. Deciding upon a course of action in this situation will involve considering what is in the patient's best interest and what constitutes a physician's appropriate role in gathering evidence for criminal investigations.

#### Case

Awakened by the loud, repetitive calling of her name, Anu squinted at the sight of the bright ceiling lights of the emergency department. Trying to make sense of where she was, she heard her mother crying. Dr. K stated loudly, "Anu, nod your head if you can hear me." Anu nodded.

Brought by ambulance after being found by a stranger late that night outside of a concert venue, Anu had sustained multiple blows to her face and head. Blood visibly ran down her neck and torn clothing, which smelled of alcohol and vomit. Anu's mother, Ms. Raina, rushed to her side as her daughter responded to Dr. K. "Honey, sweetheart, everything is going to be okay. I'm going to make it better for you," she gently spoke as she grabbed her daughter's hand. "Anu, did that boy do this to you?"

Ms. Raina motioned to talk to Dr. K a few steps away from Anu, "I can tell you it was her ex-boyfriend who did this to her, Dr. K. He beat her. He raped her. We need evidence to put him in prison. I want you to do a rape kit, collect evidence, and give her emergency contraception."

"Mom, no, I don't want any of that," Anu stated softly but clearly, "Please, no."

Ms. Raina motions for Dr. K to speak with her off to the side of the room, "She is 16 and traumatized. I am her mother. You must do these things."

Dr. K suggests to Ms. Raina that they do not need to act immediately. "We have some time before we miss opportunities to collect evidence or administer emergency contraception. Anu needs some time. I'll admit her to the unit and there'll be time to revisit these questions tomorrow."

The next day, Dr. K met again with Anu and Ms. Raina. Anu continued to refuse the pelvic exam that would be required for evidence collection, and she was unwavering in her refusal of emergency contraception. Ms. Raina steadfastly insisted on both. Dr. K explained to Ms. Raina privately, "Since Anu does not assent to the pelvic exam or to administration of emergency contraception, we would need to restrain her to do what you want us to do, Ms. Raina. Do you understand that our doing that could retraumatize her?"

Ms. Raina paused and looked away. "Can't you just put her to sleep for that?"

"Yes," Dr. K clarified, "But that's chemical restraint. That's still a use of force against a patient that can have very serious consequences for a trauma survivor."

Regretful but certain, Ms. Raina said, "Do it. That boy must pay for what he did to Anu. I could never forgive myself for letting him go without punishment."

Dr. K listened, considering what to do.

### **Commentary**

In this case, we observe the clinician considering the option of chemical restraint to meet a mother's plea that her 16-year-old daughter, who has been sexually assaulted, receive a rape kit and emergency contraception, which she has refused multiple times. A rape kit goes beyond a pelvic examination. It is a multihour exam that includes head and pubic hair combings; vaginal, anal, and oral swabs; saliva or blood samples; and fingernail clippings. A rape kit is considered a forensic exam and can only be done by trained clinicians [1]. The answer as to whether the physician should chemically restrain this patient against her will to perform this exam is a resounding "no." The reasons why the physician should not comply involve multiple ethical standards, any one of which would be sufficient to decline this request. These ethical principles will be discussed in the context of the legal landscape and patient-centered, [trauma-informed care](#).

### **Legal Issues**

If Dr. K. is unsure about whether to use force (chemical or physical) against the will of the patient, he might wish to consult legal counsel before proceeding. Who are the

responsible parties, and who gets to decide about medical intervention when the patient is underage and the patient and guardian disagree? Might courts give trauma victims more leeway in deciding their own care? Are there legal aspects the physician should be aware of as he ponders his course of action? These are reasonable questions to consult hospital counsel about concurrently with ethical considerations.

The mother is the patient's legal guardian and therefore has the authority to give consent for medical treatment up to the age of majority in most states [2]. Moreover, in states where a minor's assent is required for drug or mental health treatment, allowing parents to compel such treatment against a teenager's wishes might not succeed. Kerwin et al. note:

When families live in a state that requires a minor to consent to treatment ... parents ... can: (a) try to 'force' their unwilling child into treatment; however, even if they succeed in getting the child in the treatment door, minors in these states would be allowed legally to refuse the treatment and to discharge themselves at any point during treatment [3].

There is little precedent in literature or law that supports a parent forcing a procedure on an adolescent patient against her will, particularly if it is specific to sexual health or sexual assault [4]. By explaining to the mother that [chemical restraint](#) is the only way to perform a rape kit against the daughter's will, the physician might now benefit from legal advice if he decides he cannot proceed with the guardian's wishes.

### **Ethical Issues**

The ethical issues raised by this case scenario include respect for autonomy, shown by seeking informed assent; medical necessity; and support of surrogates.

*Consent and assent.* Although Anu is legally a minor and a proxy makes medical decisions for her (unless she resides in a state that recognizes a "mature" or "emancipated" minor status [4]), she is still an autonomous person and her explicit refusal of the procedure over a period of time is a crucial factor in the situation. The law determines whether or not she is competent, and, by virtue of her age, she has not yet attained that legal status. However, ethically, Anu might very well have capacity to decide to refuse the procedure; the capacity for voluntary consent or refusal varies over time and with the severity of the treatment decision [5], so while patients may not be legally competent, they still might have the capacity to decide in certain situations what their preferences are. The physician in this case should seek Anu's assent to perform the rape kit and should do so independently of the mother's views. Obtaining a minor's assent, or expressed voluntary participation, has been shown to empower minors and give them a means and sense of control, making it easier for them to cope with the treatment or procedure [6]. In

obtaining Anu's assent, the care team should ensure that both the mother and Anu understand the risks, benefits, and consequences of each possible action.

However, this assent must be truly voluntary. Even if Anu assented to the exam because of pressure from her mother, and perhaps fearing the possibility of chemical restraint, the physician could decline to perform the examination if he determined the assent was only given under duress. As is well understood in the field of ethics, a minor's assent or an adult's consent must be made voluntarily by a patient with decision-making capacity who understands the risks, benefits, and alternative approaches. The American Academy of Pediatrics affirmed in its ethical guidelines, "When obtaining assent from older adolescents, it is reasonable to assume that an adequate assent process would be viewed the same as the informed-consent process for adults, although parental permission is still required" [7]. Moreover, the Academy [8] recommends that informed assent should be obtained in most cases of "performance of a pelvic examination in a 16-year-old" [9], which specifically addresses the case in question and would therefore prohibit restraining Anu and forcibly conducting the rape kit [10].

*Medical necessity.* The fact that a rape kit entails obtaining multiple hair, skin, and body fluid samples provides insight into the invasive nature of the procedure. Given that this procedure is not medically necessary and could actively harm the patient through retraumatization (as will be discussed below), ethically, the burden of proof would be on the mother to explain how the benefits outweigh the risks and harms to her daughter. Anu is not requesting medical care without her mother's consent, nor is she requesting a procedure that is medically inappropriate. Rather, she is refusing a procedure that is designed to obtain forensic evidence and is not required for her health. And often, in our experience, it is easier to honor a request to refuse an intervention than to conduct an intervention against the wishes of a patient. These considerations align with the American Academy of Pediatrics, which recognizes refusal to assent based on the lack of medical necessity as a valid objection to treatment, as the refusal should "carry considerable weight" when it is not essential to welfare [11].

*Support of surrogates.* The mother in this case scenario has explicitly requested that the rape kit be done because "We need evidence to put him [the ex-boyfriend] in prison" and because she could never forgive herself "for letting him go without punishment." The underlying reasons for the rape kit are to address the needs of the mother, while only possibly benefitting Anu. In cases in which the wishes of the surrogate are not in line with the best interest of the patient, the American Academy of Pediatrics states that the clinician's duty should be "based on what the patient needs, not what someone else expresses ... the pediatrician's responsibilities to his or her patient exist independent of parental desires or proxy consent" [12]. The physician should consider the mother's request in the context of the well-being of her daughter and recognize that the mother's trauma in experiencing this ordeal is affecting the goals of care. To support her, the

physician should introduce resources such as social work and counseling before complying with a request that might originate from the mother's devastation and pain and that could ultimately harm her daughter.

### **Patient-Centered Response**

Responses to trauma survivors in the literature reveal that their experiences are relatively negative, both within the legal and medical systems [13-15]. Survivors often find that the criminal justice system has outcomes quite unfavorable to them; most sexual assault cases are never prosecuted, and, on average, in 12 percent of reported cases the offender is convicted [16]. Some behaviors that personnel might exhibit exacerbate the survivor's experience—including expressing disbelief that the survivor was raped, blaming the survivor for the assault, and treating her coldly—and are classified as secondary victimization [17, 18]. This reality is important for medical personnel to keep in mind, as the physician in this case demonstrates when he asks the mother, "Do you understand that our doing that [chemical restraint] could retraumatize her?"

Respecting rape survivors' agency is key to survivors' successful interactions with the legal and medical systems because these institutions often retraumatize women and can have a significant impact on their help-seeking experiences [18]. During a rape, a person has control taken from her or him. In the immediate aftermath of rape, one of the most important factors for the victim is to be able to re-establish some sense of control and safety, and it is important that people around the victim understand that need [18]. Anu has declared repeatedly that she does not want the exam that her mother is advocating she obtain. Moving forward regardless of the daughter's wishes could impact Anu's relationship with both her mother and health professionals for years to come.

Given what the patient has just been through and the American Academy of Pediatrics' recommendations, it is unwise for the physician to restrain Anu against her will and perform an intrusive multihour exam. This action would be uncomfortably similar to her assault and potentially harm the patient. The physician should ask the mother to consider the emotional consequences of proceeding as well as the injury it would cause to her relationship with her daughter. The family could certainly benefit from speaking to a rape crisis counselor or social worker who could listen to the mother's concerns but ultimately remind her that her daughter has made her wishes known and that those wishes must be respected. The counselor or social worker could also talk to Anu about the window of time available to get the rape evidence collected and the reality that once this window has passed, evidence can no longer be obtained, which would adversely affect her ability to press charges against her perpetrator in the future, should she change her mind. Helping Anu understand the long-term consequences of her decision is important in this situation to ensure that she is making an informed choice.

## Conclusion

To conflate a parent's desire to pursue criminal justice with medical care is a serious error that could have negative consequences for the patient. [Emergency physicians](#) often are confronted with victims of violence and must sensitively address the difficult and complex dynamics that affect the victim and family members. In some states, a volunteer from a rape crisis center will come to the hospital to support the patient and could help address parents' concerns about their daughter's physical and emotional needs as well as answer some of their questions about the criminal justice system [19-21]. A physician should develop a discharge plan for the patient, which can include counseling from a trauma specialist. For the family in this case scenario, a discharge plan would be especially important and might help the parent and child work together on the difficult healing ahead.

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ISSN 2376-6980**