PARENTAL AUTHORITY TO REFUSE ACUTE BURN TREATMENT VERSUS THE PROTECTION OUR CHILDREN DESERVE

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SUMMARY. Our society has empowered parents to care for their children and take legally binding decisions on their behalf. One of the areas where such decision making is required is in medical care when a child’s health is at stake. Three cases of child abuse and neglect were identified and reported. Literature searches were done to identify cases of child abuse in Kuwait using Medline and PubMed. News of child abuse was searched for using search engines (bbc.co.uk, cnn.com, and foxnews.com). The British Child Protection Act and the Kuwaiti Criminal Prosecution Code were studied. Child abuse and neglect exist in Kuwait and are probably underreported. The laws in Kuwait are designed to punish child abuse once it has occurred rather than aiming at preventing it. It is reported that 75% of those responsible for child abuse are the parents. They retain full authority to restrict medical access. Medical staff are offered very limited support and are restricted as to what they can achieve due to the Kuwaiti legal infrastructure, which should be amended so as to protect children rather than prosecute offenders. A local authority has to be established and empowered to investigate, report, and act when suspicions of child abuse arise.

Keywords: child protection, UK law, Kuwait law, acute burn, parent refusal of acute management

Introduction

 Universally, minors are not able to provide legally binding decisions as they are generally deemed too young and hence incapable of taking decisions that carry significant risks and consequences. Consequently, for generations, society has empowered parents or guardians to make those decisions on their behalf. This empowerment has been preserved throughout many generations as it is recognized that families, in particular parents, need decision making autonomy in a wide range of issues, in order for families to flourish, thus preserving family function so that society does not suffer. One of the issues that requires such decision making is in the field of medicine, when a child’s care and health are at stake.

There have been numerous incidents and circumstances where the opinions of a patient’s parents and of medical staff have collided as to which option is best for promoting the child’s welfare and preventing harm. Usually when such disagreements occur, the issue is taken to court. Back in 1951, the patient (CLL) was an 8-year-old girl suffering from erythroblastosis fetalis and in need of emergency treatment in the form of blood transfusions. However, her parents being Jehovah’s witnesses, this form of treatment was refused for religious reasons. Three doctors testified in favour and emphasized the importance of blood transfusion. Two of them were certain that CLL would die without a transfusion, and the final doctor testified that CLL had a “slim chance to live without blood transfusion, and even if she did survive, without a transfusion her brain would probably be so injured that she would be mentally impaired for life.” Citing commandments in Genesis (chap. 9, verse 4) and Leviticus (chap. 17, verse 14), the parents testified that they would be breaking God’s commandment, and therefore jeopardizing their daughter’s future in the next life, which was more important than her earthly life.

The court eventually gave consent for the blood transfusion to go ahead, upholding the ruling in the Prince v. Massachusetts case that “neither rights of religion nor rights of parenthood are beyond limitation” and hence parental authority was not absolute and could be restricted, if doing so would be in the child’s best interests. In 2008, an 11-year-old child, NKM, died from diabetic ketoacidosis after her parents prayed for healing rather than seek help. The parents attributed their daughter’s death to their lack of faith.

In almost all cases, both parents and medical staff act according to their beliefs, that it is, to the child’s best in-
terest and welfare. In western countries, child protection and welfare laws are well established and therefore most of these cases and disputes are referred to the courts where the final verdict will be pronounced, with a court order handed to both parties about the necessary action to take. Unfortunately, in Kuwait, there are no such laws. Medical personnel experience multiple situations where the child’s welfare is at stake but for a number of reasons parents refuse medical treatment. These reasons range from belief in alternative/herbal medicine to wanting to go abroad for treatment. Only in extreme circumstances, when the child’s life is immediately at risk, can the medical staff treat the child with the necessary surgical intervention. Otherwise, they risk being accused of assault and may face legal consequences.

The article presents cases in which parents have refused treatment on behalf of their children, and aims at investigating the difficulties faced by Kuwaiti medical staff when such circumstances occur by exploring Kuwaiti laws and comparing them to those of the UK, as well as discovering ways by which doctors can better protect such children from further harm while protecting themselves from accusations and prosecutions. Recommendations will also be highlighted so that, in future cases, doctors will be able to do more to prevent further harm to children when definitive treatment is necessary.

**Methods**

The literature was searched using Medline and Pubmed. Keywords included: child, protection, abuse, neglect, parent, refusal, treatment, burn, United Kingdom, Kuwait. Previous law cases and news were also searched by utilizing search engines such as google.com, bbc.co.uk, cnn.com, and foxnews.com. The UK Child Protection Act was retrieved from www.legislation.gov.uk. Kuwaiti laws concerning the prosecution of people accused of child abuse and neglect were retrieved from the State of Kuwait: Laws of Prosecution, Protocols and Criminal Proceedings.

Three patient files were retrieved from the register book where there was documentation that parents refused acute management of a burn or when the presentation was late. Consent was taken from the parents to publish the case reports and for any pictures taken to be used. As part of Al-Babtain Admission Protocol, all admissions are reported to the police.

**Case reports**

**Case 1: SAM**

SAM, a 7-yr-old boy with no past medical history, was admitted to the Al-Babtain National Center for Burns on 3 November 2011 following an accident due to handling fireworks. The injury resulted in a 20% flame burn. Areas affected included three-quarters of the chest, the ventral aspect of the left upper limb, and the left hand. The burn was mostly dermal with varying levels of depth, with only the hand sustaining a superficial burn. SAM was resuscitated and the wounds were dressed with Flamazine. The wounds were then reviewed on a daily basis.

On the third day of admission, SAM’s burn wounds were rated to be full thickness. A management plan was then formulated: excision was required for the full-thickness burns. The surgical procedure was then discussed with the father, who refused his consent. His refusal was based on the fact that the child’s father was going to France in four months’ time and would then take SAM with him to be treated there. Over the next two days, on a daily basis, doctors on the ward rounds explained to the parents the risks incurred by their child if they kept on refusing surgery. Complications discussed included sepsis, multi-organ failure, and death. Such discussions took place during the ward rounds between different doctors of different grades, from consultants to registrars, and the mother and uncle. The father was rarely seen.

Over the next two days, visiting professors saw SAM and agreed that surgical excision was needed. They attempted many times to explain to the mother the urgency of the situation. However, the mother was very persistent, saying “the decision is to be made with the father”. The father was seen on two occasions, first on 17/11/2011, and then on 21/11/2011. He signed a form stating that he was fully aware that by refusing any surgical intervention, he was risking that SAM’s conditions might deteriorate because of sepsis and that this might eventually lead to multi-organ failure and even death. On 27/11/2011, another attempt was made to discuss matters with the father, but this ended with no results as the father kept refusing. On 28/11/2011, the parents discharged SAM against medical advice.

**Case 2: LHA**

LHA, a 7-yr-old girl, was admitted to Al-Babtain Center on 28 November 2011 with a post-burn raw area equal to 40% of the total body surface area. Her parents claimed that she had suffered a scald burn (hot water) one month earlier in Saudi Arabia, and had been admitted to hospital there. The father claimed that the child had been discharged against medical advice because the doctors were treating her conservatively and she was not improving, while the mother maintained that no medical advice had been sought and the child was being treated at home with herbal/alternative medicine. There was no mention of follow-up checks by any doctor in Saudi Arabia. The raw area involved the posterior aspect of the girl’s right arm, back, right flank, buttocks, posterior aspect of both lower limbs, and anterior aspect of the right thigh. Owing to the complex nature of her condition, she was initially admit-
Case 3: FTA
FTA was a 3-yr-old female child first admitted to Al-Babtain Center for Burns on 27 November 2010 following a spilling accident (hot tea) that resulted in a 5% scald burn in the left forearm, hand and left lower limb. Past medical history included asthma and hiatus hernia, which was treated in the early neonatal period. The burn was then diagnosed as deep dermal and Flamazine dressing was initiated. On the next day, it was decided that FTA required surgery, the father refused any surgical procedure and discharged FTA against medical advice. The refusal was based on the invasive nature of the surgical management.

On 24/11/2011, FTA was reviewed by visiting professor Ms Wilson. A large hypertrophic scar was present on the dorsal aspect of the wrist with contracture that represented that the child is suffering or is likely to suffer significant harm or when access to the child is being unjustifiably refused to authorized persons, especially when access is a matter of urgency. In such circumstances, the child can be removed from its present accommodation by the court order. Unfortunately in Kuwait, as already said, there is no such law. Only when a child has suffered will the responsible party be punished. This applies even if the issue has reached the courts. Al-Ateeqi et al. concluded that child abuse exists within Kuwait and is underreported probably because of lack of appropriate guidelines and legislation. One of the primary reasons why such cases are underreported is the absence of any local authority that is responsible for child protection. The local authority responsible for investigating claims of child abuse or neglect is the police department, and it is mandated by law that all cases of trauma, or cases where suspicion arises, are to be reported. As a report of this kind may well change the status of the case to that of a criminal charge, the doctor may be undecided between protecting himself or acting as the primary advocate for child protection.9, 10

Kuwait criminal prosecution code
Unfortunately, the Kuwaiti legal system has no child protection laws. However, there are prosecution laws when the child suffers harm. Law code article 167 states that every parent or assigned person with parental authority is responsible for the care of the child in question. Anyone who does not provide the child with the necessary care, resulting in the child suffering from harm or death, is to be prosecuted accordingly. If the parents or persons with parental authority wilfully withhold their responsibilities, resulting in the child’s death or suffering harm, their intentions and the severity of the suffering or injuries sustained will be assessed. If the wilful action results in death, punishment ranges from a capital sentence to life imprisonment, and fines that have to be paid. If a wilful act results in death which was not intentional, the punishment is a minimum of 10 years’ jail plus a fine. If the result of the wilful action results in harm, the severity of the harm will be assessed and documented and, depending on severity, a jail sentence and fine will be ordered. If the child’s death or suffering is unintentional, the punishment will include a jail sentence and a fine. The severity of the latter punishment will depend on the circumstances of the case.

Discussion
The principle of the child protection act is that the child’s welfare is paramount and aims at preventing or eliminating any suffering from significant harm that can be inflicted on children. Harm is defined as ill-treatment (including sexual abuse and non-physical forms) or impairment of health (physical and mental) or development (physical, emotional, social, or behavioural). The term ‘significant’ is not defined by the act. The act assigns to the local authorities the task of investigating any incident where a child is believed to be suffering or likely to be suffering significant harm, and to make direct application for a court order. Unfortunately in Kuwait, as already said, there is no such law. Only when a child has suffered will the responsible party be punished. This applies even if the issue has reached the courts. Al-Ateeqi et al. concluded that child abuse exists within Kuwait and is underreported probably because of lack of appropriate guidelines and legislation. One of the primary reasons why such cases are underreported is the absence of any local authority that is responsible for child protection. The local authority responsible for investigating claims of child abuse or neglect is the police department, and it is mandated by law that all cases of trauma, or cases where suspicion arises, are to be reported. As a report of this kind may well change the status of the case to that of a criminal charge, the doctor may be undecided between protecting himself or acting as the primary advocate for child protection.9, 10
Under British and Kuwaiti law, parents have parental responsibility over their child. In the Child Protection Act, this is defined as all rights, duties, power, responsibilities and authority a parent has in relation to their child and its property. This indicates that one of the parents’ responsibilities and duties towards their child is to give consent for medical treatment. Therefore in the event of parents refusing treatment, any procedure or management done by medical staff is considered trespassing and may be equivalent to criminal assault. However, parental rights and duties are absolute and only exist in the child’s best interest. Ultimately, it is the courts that have overriding control. In Kuwaiti law, law code article 168 states that any person who attempts (in non-emergency cases) to perform a surgical procedure on another person, or to treat him, or submit him to a management plan that jeopardizes the person’s life or health without technical expertise or without providing sufficient care, thus resulting in a harm or the death of the person concerned, will be liable to prosecution, a jail sentence, and a fine. Legal definitions are not to be found in Kuwaiti law and are therefore left open for individual interpretation. In the event of surgery being performed or any form of treatment being provided, especially when the circumstances are not immediately life-threatening, the doctor may be liable for damages and be accused of medical negligence if complications arise. Therefore, when a child is suffering from a condition that is not immediately life-threatening, a doctor may be less inclined to pursue definitive treatment when parents refuse medical treatment in order to circumvent avoidable law suits which carry the risk of criminal charges and forfeiture of medical licences.

In the UK, neglect is defined as the persistent failure to meet a child’s basic physical and/or psychological needs likely to result in serious impairment of the child’s health or development. This includes failure to ensure access to appropriate medical care or treatment. Therefore, any responsible person who wilfully neglects a child, or permits such a neglect in a manner likely to cause the child unnecessary suffering or injury to its health, shall be guilty of misdemeanour. According to the criminal prosecution code in the State of Kuwait, any parent or guardian who wilfully or unintentionally neglects their responsibilities towards their children, including ensuring their health, is to be indicted. However, no cases of prosecution have been found.

In the UK, 5.9% of children under 11, 18.6% of children aged from 11-17, and 25.3% of 18 to 24 year olds experienced maltreatment during childhood. There are several maltreatment cases where only the child and the perpetrator knew about the abuse: 22.9% were physically hurt by a parent or guardian, 34% were sexually abused by an adult, and 82.7% were sexually abused by a peer. However, the National Society for the Prevention of Cruelty to Children (NSPCC) states that the gap between the known and unknown cases of severe maltreatment and abuse needs further assessment as a high proportion of experiences of abuse are unknown to children’s services. As in the UK, child abuse and neglect exist in Kuwait. However, owing to lack of adequate data, it is assumed that child abuse within the Arab Peninsula has a low incidence rate, which is not true. It is reported that the number of child abuse cases admitted in Kuwait is probably an underestimate of the actual size of the problem. Al-Ateeqi et al. concluded that the possible reasons behind this include the following:

- 75% of the perpetrators were the children’s parents, who have the right to refuse hospitalization and have full authority to have the child discharged from hospital before confirmation of the diagnosis and initiation of proceedings;
- sexual abuse is usually denied and concealed as the families tend to refuse further action to avoid stigmatization, shame and disgrace;
- a substantial number of abuse cases may be missed in the Accident and Emergency Department.

This retrospective analysis of children admitted to two hospitals in Kuwait from 1991 to 1998 identified 16 cases of child abuse: 13 children experienced physical abuse (including bruises, burns, intentional criminal harm, fractures, cut wounds, etc.), two children experienced sexual abuse, and one child was diagnosed as suffering from the Munchausen syndrome by proxy. Seven of the affected children were returned to their biological parents, seven were lost to follow-up (and further abuse was probable), and two died. Other cases were not found to be reported in the recent literature.

**Recommendations**

1. Currently, the law describes neglect and punishment related to it. However, the wording is somewhat vague and no clear definitions are outlined. This, and the law which prosecutes medical staff if they carry out a medical procedure without consent of the family, need to be amended in order to protect and preserve children’s welfare.

2. No child protection legislation is present in order to prevent child abuse or make an early diagnosis. This measure has to be established in Kuwait and must contain clear definitions and descriptions about the roles of different professions. Punishment for such crimes when committed on children has to be clearly outlined.

3. A legal authority (similar to that of NSPCC) has to be set up and empowered by law in order to protect children.

4. Guidelines have to be drawn up by medical and legal teams in order to help doctors and other personnel acting within society.
Conclusion

Although vague and imprecise, Kuwait’s legal infrastructure is primarily designed to prosecute child abuse and neglect once it has occurred and the child has suffered. Despite the existence of apposite laws, cases are underreported and offenders are rarely prosecuted. Most perpetrators of child abuse are found to be the parents, who still retain full authority to restrict access to medical care. The law in Kuwait has to be amended, with the intention of preventing child abuse when suspicion arises. Local authorities should be set up and empowered to investigate such cases.

RÉSUMÉ. Notre société a habilité les parents à s’occuper de leurs enfants et de prendre des décisions juridiquement contraignantes en leur nom. L’un des domaines où une telle prise de décision est nécessaire, c’est dans les soins médicaux lorsque la santé de l’enfant est en cause. Trois cas d’abus et de négligence envers des enfants ont été identifiés et signalés. Des recherches documentaires ont été effectuées pour identifier les cas de maltraitance d’enfants au Koweït en utilisant Medline et PubMed. Les informations sur les abus en âge pédiatrique ont été recherchées en utilisant les moteurs de recherche bbc.co.uk, cnn.com et foxnews.com. La loi sur la protection des enfants dans le Royaume Uni et le Code de procédure criminelle koweïtienne ont été étudiés. La maltraitance des enfants et la négligence existent au Koweït et sont probablement sous-estimées. Les lois du Koweït visent à punir la maltraitance des enfants une fois vérifiée plutôt que de viser à la prévenir. Il est rapporté que 75% des responsables de la maltraitance des enfants sont les parents, qui conservent tous les pouvoirs pour limiter l’accès médical. Le personnel médical possède un soutien très limité et sont limités quant à ce qu’ils peuvent réaliser grâce à l’infrastructure juridique du Koweït. L’infrastructure juridique du pays Koweït doit être modifiée pour protéger les enfants plutôt que de poursuivre les contrevenants. Une autorité locale doit être établie et habilitée à enquêter, rapporter et agir lorsque les soupçons de maltraitance surviennent.

Mots-clés: protection des enfants, loi du Royaume-Uni, loi du Koweït, brûlure aiguë, refus de la gestion aiguë

BIBLIOGRAPHY


This paper was accepted on 18 January 2013.

The editors of Annals have received a Commentary by Prof. Marija Trop on the above paper, and they are pleased to publish it.

Commentary

The article “Parental authority to refuse acute burn treatment versus the protection our children deserve” by Al-Tarrah K, Khashaba H, Wilson Y, Al-Fadhli A and Moiemen N (Kuwait) delivers one very important message: the parents or legal guardians do not always make decisions in the best interest of their child. Even worse, they can sometimes inflict damage, whether direct or indirect, immediate or long-term. Child neglect can easily slip into becoming abuse. The par-
ents’ reasons behind this can vary greatly, as can the consequences for the child. Because of the irrational behaviour of distraught parents in such situations, medical personnel become deeply involved; emotional from their protective instincts, they are also frustrated by the restrictions of the legal support systems. It is not possible to escape this dilemma without legal help. In order to change the law or modernize law standards, this startling message must shake the public awake in order to initiate a discussion in a broader forum. Not only in Kuwait!

The number of abuse cases involving thermal noxae is underrepresented in published reports. The problem lies in the fact that every wound can be explained away with a ‘true’ story of an accident: that is to say, there is no evidence model; there is only more or less suspicion.

The biggest dilemma arises however when medical personnel harbour a strong suspicion that they are dealing with a case of abuse, but there is not enough evidence to prove it. How does one deal with this? On the one hand, undetected abuse can lead to more abuse, which can eventually end in the death of the victim. On the other hand, one must never forget that a false accusation can cause a person a great deal of harm. In the case of neglect, as evidenced here in this article, the demonstration of proof can be even more difficult.

The setting-up of a child protection group to provide emotional relief and strengthen the legal support given to medical personnel in paediatric hospitals has proved to be of great value. A child protection group is established by law in my country (Austria). This ensures that members have clear legal guidelines. For medical personnel, this means that they can concentrate on the treatment of the child, and the search for the “perpetrator” can be left to the authorities.

The authors draw the right conclusion in their article: a paradigm shift is required not only in society but also in the legal system; new laws must be implemented and executed. Getting there will be onerous and long to accomplish, and will require a lot of strength. But if an improvement of the current situation is to be achieved, there is no alternative.

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