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When Surrogates' Responsibilities and Religious Concerns Intersect

Jeffrey T. Berger

Jeffrey T. Berger, MD, is an Associate Professor of Medicine, SUNY Stony Brook School of Medicine, Stony Brook, New York, and Director of Clinical Ethics, Department of Medicine, Winthrop-University Hospital, Mineola, New York, *jberger@winthrop.org.*

The case of Mr. G, presented by Craig D. Blinderman, MD, raises a number of interesting ethical issues.[1] I wish to examine some of these that are related to surrogacy. In this case, Ms K was the daughter Mr. G did not choose to be his health agent. Nevertheless, Ms K represents her desire to stop aggressive treatment as being consistent with her father's treatment preferences — a substituted judgment. Ms G, the Orthodox Jewish daughter chosen by Mr. G to be his agent, states that her decision to continue treatments is based on *her* beliefs and Jewish law. This healthcare agent's decision-making method does not conform to the accepted hierarchy of standards: known wishes, substituted judgments, and best interests. It also appears consistent with evidence suggesting that religiosity is associated with surrogate decisions to over treat.[2]

Ms G is obviously the legally empowered decision maker, but which of these two daughters is the most ethically appropriate surrogate decision maker? To assess this, a number of questions need to be asked and issues raised. We do not know Mr. G's religious values and treatment preferences (beyond Ms K's representation of the latter). We know little about the parental and sibling relationships in this family, and we do not know which, if either, daughter has a good understanding of Mr. G's wishes. At the time Mr. G assigned proxy authority, what was his level of cognitive functioning? Was he aware that when he designated one daughter as health agent, he legally excluded his other one from participating in decisions and was this his intention? Did Mr. G base his selection of agent on one of several common misapprehensions, such as the agent should be the one most geographically accessible or the eldest of the siblings? Was Ms G Orthodox in her personal religious practices at the time Mr. G appointed her as his health agent and was he aware of this? These and other concerns would need elucidation in evaluating the ethical fitness of Mr. G's surrogate.

For this discussion, let us assume that Ms G is in fact making an appropriate substituted judgment and that her decisions are made based on her personally held values and religious requirements. Ms G's approach to decision making is not all that unusual. Evidence suggests that many patients and surrogates do not necessarily follow the normative cascade of decision-making standards.[3] In fact, many patients value trust over accuracy in decisions; many patients prefer that their surrogates exercise judgment in response to actual clinical situations even if decisions depart from expressed wishes; and many patients accept surrogate deci-

sions based on both medical and nonmedical considerations, including the welfare and well-being of their family member-surrogates.[4]

It is likely that Mr. G knew of his daughter's Orthodox Jewish commitment, and perhaps, he selected Ms G because of it. Mr. G may have understood this daughter to be more deeply committed than her secular sister to an obligation in Jewish moral life that is held as primary: *kivod av v'em* — honoring one's father and mother. This obligation, which is rooted in the fifth of the Ten Commandments, would require Ms G to provide for her father's physical needs, to attend to his dignity, and to act with a respectful attitude or spirit, even at great personal sacrifice.[5] Mr. G's confidence in his daughter's filial piety would be an ethically appropriate basis to respect her decision-making authority.

Perhaps Mr. G selected Ms G as his agent not because he thought that she would best represent his medical concerns, but for another reason. A Jewish imperative is *shalom bayit,* that is, maintaining peace and harmony in one's home or family. Not uncommonly, in Jewish families, significant compromises are made to ensure domestic tranquility. It is possible that choosing Ms K as the proxy would have been more disruptive to the family dynamic than choosing Ms G, even though Ms K would better represent Mr. G's medical preferences. This is a trade-off that Mr. G may have made intentionally and willingly.

On a different tack, what is the patient's responsibility in assigning proxy authority? For purposes of discussion, let's assume that Mr. G empowered his Orthodox daughter to be his health agent and also left instructions in an advance directive that she should make decisions according to his secular ethics. Is it fair for the patient to place his daughter in the position of choosing between violating her personal morals and stepping back from participating in her father's care? Conversely, what is the health agent's responsibility? May an agent apply any moral code to decisions? For instance, a semi-estranged daughter returns from Asia as a practicing Buddhist to care for her now-demented father. Is it permissible for her to base decisions on her religious convictions, since she knows little about her father's, or should she proceed in decision making using a more generic ethics?

Is it appropriate for Ms G to apply her Orthodox Jewish religious requirements to decisions on her father's behalf? By virtue of her Orthodoxy, she is likely operating under a different set of assumptions about autonomy and decision making than are the members of the health team. In American secular ethics, the principal of autonomy is generally viewed as *prima facie,* if not frequently inviolate. However, in traditional Jewish ethics, autonomy is not understood as absolute ownership of one's body and life, but instead mere stewardship of that which belongs to God. Moreover, respect for persons comes from the view that humans are created in God's image. Although Judaism accepts the notion of free will, Judaism also understands that a Jew's choices are bounded by the laws of Torah, and therefore Jewish law prohibits Jewish patients from making decisions contrary to *halacha*.[6] To illustrate, in secular ethics, it is permissible to decline a curative or life-saving treatment based on a patient's determination that his or her quality of life is poor. Jewish ethics would essentially prohibit such an "autonomous" choice.

The case of Mr. G illustrates the multilayered ambiguities commonplace in clinical ethics generally and in surrogacy specifically, as well, and the sorts of issues clinical ethics consultants must tease apart. Moreover, it highlights the profound role religion plays in the lives of many people and underscores the importance for health professionals to recognize, understand, and address the role of religion in health, illness, and family, and to work with clergy for the good of the patient and family.

NOTES

1. C.D. Blinderman, "Jewish Law and End-of-Life Decision Making: A Case Report," in this issue of *JCE.*

2. D.P. Sulmasy et al., "The Accuracy of Substituted Judgments in Patients with Terminal Diagnoses," *Annals of Internal Medicine* 128, no. 8 (1998): 621-9; M. Sonnenblick, Y. Friedlander, and A. Steinberg, "Dissociation Between the Wishes of Terminally Ill Parents and Decisions by Their Offspring," *Journal of the American Geriatrics Society* 41, no. 6 (1993): 599-604.

3. American Medical Association, "Surrogate Decision Making," *http://www.ama-assn.org/ama/pub/category/8489.html,* accessed 25 July 2007; American Geriatrics Society Ethics Committee, "Principles Governing Decision Making for Patients Who Lack Decisional Capacity," *http://www.geriatricsreviewsyllabus.org/content/agscontent/legal6_m.htm,* accessed 25 July 2007; P.A. Singer et al., "Reconceptualizing Advance Care Planning from the Patient's Perspective," *Archives of Internal Medicine* 158 (1998): 879-84; D.M. High, "Why are Elderly People Not Using Advance Directives?" *Journal on Aging and Health* 5 (1993): 497-515.

4. N.A. Hawkins et al., "Micromanaging Death: Process Preferences, Values, and Goals in End-of-Life Medical Decision Making," *Gerontologist* 45 (2005): 107-17; J.J. Fins et al., "Contracts, Covenants and Advance Care Planning: An Empirical Study of the Moral Obligations of Patient and Proxy," *Journal of Pain Symptom Management* 29 (2005): 55-68; C.M. Puchalski et al., "Patients Who Want Their Family And Physician To Make Resuscitation Decisions For Them: Observations From SUPPORT And HELP. Study To Understand Prognoses And Preferences For Outcomes And Risks Of Treatment. Hospitalized Elderly Longitudinal Project," *Journal of the American Geriatrics Society* 48 (2000): S84-S90; A. Sehgal et al., "How Strictly Do Dialysis Patients Want Their Advance Directives Followed?" *Journal of the American Medical Association* 267 (1992): 59-63; C.D. Moore et al., "Surrogate Decision-Making: Judgment Standard Preferences of Older Adults," *Social Work in Health Care* 37 (2003): 1-16; P.B. Terry et al., "End-Of-Life Decision Making: When Patients And Surrogates Disagree," *The Journal of Clinical Ethics* 10, no. 3 (Fall 1999): 286-93; J.T. Berger, "Patients' Interests in their Family Members' Well-Being: An Overlooked, Fundamental Consideration within Substituted Judgments," *The Journal of Clinical Ethics* 16, no. 1 (Spring 2005): 3-10.

5. A. Cohen, *Everyman's Talmud* (New York: Schoken Books, 1949), 180-93.

6. A. Steinberg, *Encyclopedia of Jewish Medical Ethics* (Jerusalem: Feldheim Publishers, 2003), 385-6.