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REVIEW ARTICLE

Discharge in pediatric practice: analysis of autonomy and risk

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Abstract

Understanding the risk involved in medical management is fundamental to prevent damage. Especially in the hospital discharge and at the request one by the parents. This situation usually occurs when there is no enough time to establish a good relationship with responsible for the child.

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When discussing the subject of hospital discharge, one must consider some factors that interfere and influence this decision. Among these factors, the autonomy of those responsible for the minor, the autonomy of the assisting physician, and the quantification and qualification of the risk involved are paramount.

These factors are managed in the best and most peaceful way when a healthy, strong, and robust physician-patient-family relationship has been built before or during the period of hospital stay. The physician-patient-family relationship is undoubtedly the most important preventive factor in practically all conflicts arising in the pediatric clinical practice.

AUTONOMY

Autonomy presupposes that the individual is free to make personal choices, provided these are informed choices. The person should be free to think and be free from coercions to be able to choose between the presented alternatives. Autonomy cannot be exercised if there is no opportunity to choose or there is not an alternative.

The term "autonomy" comes from the Greek word *autonomia*, which is formed by the adjective *autos* (self, by oneself) and *nomos* (sharing, law, convention), and means the competence to "determine one's own laws".

Autonomy should be respected in treatments, procedures and hospital discharge. However, there must be a balance between the manifestations of autonomy from the parties involved in the physician-patient-family relationship. When there is imminent risk of death, the individuals or the legal representatives lose their autonomy to decide, because the law gives them the right to life but not over life.

In addition, some currents of thought defend the idea that autonomy in childhood and adolescence can be analyzed in the light of the person's (in this case the minor's) development and capacity of judgement.

Risk is another aspect that needs to be discussed when considering the factors involved in hospital discharge.

There are several theories on risk and herein we address some that are intrinsically associated with medical conduct during hospital discharge.

It should be clear that in any treatment or procedure, the physician must always take care to ensure two things: that the patient's health is preserved, and that ethical misconduct is prevented. To that effect it is essential to identify, quantify and qualify the risk associated with the physician's conduct.

THEORIES OF RISK

Risk is related to reparation of damage in those situations in which damage implicit in the risk occurs but had not been considered or foreseen.

According to this theory, anyone who engages in some activity that creates a risk of harm to third parties should be obliged to repair it, even if their conduct is not at fault. This means that civil liability moves away from the notion of fault to the idea of risk.

The theory of risk emerged at the end of the 19th century as grounds for liability for the danger of causing harm to life, health or other assets, creating risk of damage to third parties, based on an activity engaged by an agent.

There are different strands of the theory of risk, of which we highlight the following:

- According to the profit risk theory, the person responsible is the one who profits; liability resides where the gain is;
- According to the professional risk theory, the obligation to compensate exists when the damaging event is a consequence of the activity or profession of the person who has sustained damage. This type of risk is considered in occupational health.
- According to the exceptional risk theory, liability exists when the damage is a consequence of an abnormal situation outside the scope of the victim's usual activity.
- According to the theory of created risk, a person who engages in an activity answers for the damaging events which that activity creates for other individuals, regardless of whether, in each single instance, the damage is due to recklessness or misconduct.

Adib Salim, in an article on the theory of risk, cites another author, Caio Mario, who summarizes: *"(...) anyone who, as a result of his/her activity or profession, creates a danger, is subject to repair the damage he/she may cause, unless there is proof that he/she has taken all the suitable measures to avoid it, (...)*".

The understanding of the risk involved in medical conduct is a fundamental factor of damage prevention, especially in hospital discharge and specifically in discharge requested by those responsible. This situation usually occurs when there is not enough time to establish a good relationship with those responsible for the minor.

DISCHARGE ON REQUEST

A discharge carried out following a request from those responsible is an extemporaneous discharge and one in which not all conditions are met for the patient to continue the treatment at home; therefore, there is a high risk of the patient's condition worsening at home or even during transportation in a vehicle that is not adapted to potential complications.

When a patient is discharged from one hospital and transferred to another health facility, the removal should be conducted with all the required and standard care to eliminate all risks involved in the procedure.

It should be very clear that when a physician accepts and carries out a request for discharge, he/she is transforming

this requested discharge into a discharge programmed by him/her, and taking on all the responsibility for such an act. In the strictest sense, discharge on request does not exist and should be denied by the physician.

By denying a request of discharge from those responsible, the physician is respecting the bioethical principles of Beneficence (doing good, because treatment is not being interrupted), No Harm (causing no harm, because damage is being prevented), and Justice (fairness, because access to treatment is not being withdrawn).

However, an analysis of the two parties that participate in the process of a discharge on request is in order. For this purpose both points of view should be considered:

1 – Support for the patient's decision:

The patient has the right, even after being informed, to reject diagnostic or therapeutic procedures, and the physician cannot disrespect that decision, otherwise he/she will be committing duress. However, this entitlement ceases to exist if there is imminent danger of death, in which case the discharge must be denied.

2 – Support for the physician's decision:

The physician can and must deny discharge if he/she foresees risk involved. The physician may claim that the patient or the person responsible is not capable of a realistic health status assessment. For this reason, by accepting the discharge request the physician may be taking on the responsibility.

In Brazil, ethical support for the physician's action is provided by the national Code of Medical Ethics:

Art. 4 - The physician shall not: fail to take on the responsibility of any professional act that he/she may have practiced or indicated, even if requested or consented by the patient or his/her legal representative.

Art. 6 - The physician shall not: attribute his/her failures to third parties and exceptional circumstances, except when this can be duly established.

Art. 31- The physician shall not: disrespect the right of the patient or his/her legal representative to freely decide about diagnostic or therapeutic procedures, except in case of imminent risk of death. *(Our emphasis – related to risk.)*

Two important conclusions are drawn from these articles: the autonomy of the legal representatives is relative, and the physician cannot ignore the analysis of the risk involved in his/her conduct.

Another deontological example that is associated with risk and the relative autonomy of the minor's legal representatives is the following:

Art. 74: The physician shall not: reveal confidential information regarding a patient who is a minor, including to the parents or legal representatives, provided the minor has the capacity of judgment, except when not revealing the information leads to harm to the patient. *(Our emphasis – related to risk.)*

It becomes clear that physicians should orient their conduct taking into account the relationship with the patient and the legal representatives, which should be based on the explanation of the actual situation and the risks involved that arise both from the illness and from an early discharge.

This is why any treatment or procedure should be fully explained to convince the patient/legal representative that it is the indicated procedure and of the need for such conduct.

The identification of the risk of harm or threat to life, whether it is a real or a potential threat, is a key condition for not considering the autonomy of the patient/legal representative an absolute right, so that the necessary treatment is initiated or continued without interruption.

The following are legal opinions from the Brazilian Federal Council of Medicine (CFM) and some regional council that address matters of discharge on request:

Regional Council of Medicine of the State of Rio de Janeiro (CREMERJ) – Legal Opinion 03 / 1989

(...)

1. *If the case is serious and discharging the patient from the hospital is likely to cause him/her further problems and worsen his/her condition, the physician cannot and must not allow it to happen, even when there is a signed consent form.*
2. *The consent form, as a legally valid document, is only acceptable when there is medical certainty that discharging the patient from the health facility will not cause him/her any problem.*
3. *The removal or transfer of a patient is an act within the competence of the physician, who is the only authority capable of assessing the patient's condition. The authorization given by the layman does not exclude the responsibility of the technician in case of damage.*
4. *We consider that up to the present, even with the existence of a signed consent form, the physician is not protected against being sued by the patient's family if harm is caused to this patient after his/her transfer.*
5. *Therefore, we recommend that the responsible physician contacts the relevant authority in the case of insoluble conflict.*

2 – CFM - CONSULTATION PROCEDURE Number 7,299/99 - PC/CFM/Nº 33/2000

SYLLABUS: *The physician should not consent to the discharge of a patient under his/her care when he/she considers that this action may put the patient's life at risk. If the family or those responsible for the patient wish to transfer him/her and are not convinced that the physician's conduct is correct, the physician should have another health professional indicated or accepted by the family assume care, documenting the reasons for that action.*

DISCHARGE FOR INDISCIPLINE

Regional councils have provided advice on this type of discharge. It could be used in cases of inappropriate patient

conduct. In the field of pediatrics it can occur with hospitalized adolescents, although it is not frequent.

1- Regional Council of Medicine of the State of Rio de Janeiro (CREMERJ) - Legal Opinion 162 / 05

(...) The Advisory Disciplinarian Commission of the CREMERJ – CODIPAR states that it is not officially aware of the concept of medical discharge for indiscipline, and that the administrative nature of the matter is indubitable.

However, from an ethical point of view applicable to the matter, we refer to article 36 of the Code of Medical Ethics.

(...) Therefore, according to the dictates above, the assistant physician or even the clinical board of the institution may, after exhausting all attempts to correct the patient's behavior, carry out the discharge for the mentioned reason, provided that the continuity of the treatment is ensured, without prejudice to the patient or the community.

It should be stressed that the patient/legal representative should be duly informed about the chosen course of action.

This administrative measure aims to protect the rights of other hospitalized patients because the inconvenience of such behavior can compromise their treatment.

Art. 36. The physician shall not: abandon a patient who is under his/her care.

1st clause: In the face of facts that, at the physician's discretion, hinder the good relationship with the patient or his/her full professional performance, the physician has the right to renounce the assistance, provided that he/she informs the patient/legal representative in advance, ensures the continuation of care, and provides all the necessary information to the successor.

2nd clause: Unless there is a proper reason, which is communicated to the patient or his/her relatives, the physician shall not abandon a patient because he/she has a chronic or incurable illness, and shall continue to assist the patient, albeit in palliative care.

2 - Regional Council of Medicine of the State of Bahia (CREMEB) - Consultation Expedient number 159.666/08

SYLLABUS: It is possible to carry out a discharge for indiscipline on the part of a patient who infringes the disciplinary norms of the institution, provided that all efforts to contain his/her inadequate behavior have been made and the continuity of medical care has been ensured.

DISCHARGE "IN ABSENTIA"

This type of discharge is considered denied assistance from those responsible for the patient because they actually evade or escape from the health facility.

This is an abandonment of treatment and child maltreatment.

It is important to register the occurrence in the patient's medical records and report it to the relevant authority.

This is grounds for making a complaint to the Guardianship Council.

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