Refusing to Examine Extremely Premature Newborns

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Introduction

Some doctors argue that it is wrong to treat extremely premature babies because many of them will survive with a disability. After convincing the parents to choose palliative care, these doctors refuse to examine such babies at birth.

For at least twenty years, some neonatologists have been advocating palliative care because extremely premature babies are likely to die or survive with an “unacceptable” disability (Kaempf 2008). In 2006, periviability guidelines were published that recommend withholding life-sustaining interventions for these babies (Kaempf et al. 2006, 22). Negative message framing and directive counseling convince many parents that their babies will either die or be disabled. These parents choose palliative care, often weeks before birth (Marmion 2017, 858). Once this choice is made, the parents are told that the doctor will not be present to examine their baby at birth.¹

Ethical Considerations

Beneficence (do no harm) is a major ethical principle in the practice of medicine. This principle is violated when doctors frame messages in a negative way, which may influence the parents to decline the institution of life-sustaining interventions. Autonomy (informed consent), another important ethical principle, is violated when such directive counseling convinces the parents to forgo an examination of their newly born baby. An examination is necessary in order to confirm the diagnosis and establish a prognosis (Bellieni 2011). Is it possible for the parents to give valid consent for a treatment plan without their baby being examined? Denying an examination would never happen for a child with bacterial meningitis, even though permanent neurologic sequelae occur in up to one-half of the survivors. There should be similar standards of care for a premature baby as for a child. Neonatologist and ethicist John Lantos opined, “The question is ‘whether a preemie at the

borderline of viability is more like a fetus or more like a child.’ The way we make decisions, I think, suggests that parental rights should be more like the rights of a pregnant woman to abort a fetus than they are like the principles we apply to older children” (Lantos 2015).

Since the parents of very early premature babies lack the expertise needed to judge whether a particular health intervention is appropriate, they trust that their baby’s best interests are the only basis for their doctor’s recommendations (Brock and Buchanan 1986). In essence, the doctor becomes the de facto decision maker: the parents expect a treatment plan that will best promote their baby’s well-being. By refusing to examine their baby, the doctor violates this trust. Forsaking the duty to examine violates the Declaration of Geneva that was formulated in 1948 to prevent human rights violations by physicians such as occurred during World War II: “As a member of the medical profession, I will not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between my duty and my patient” (World Medical Association 2017). Abrogating their duty to examine is a violation of the newly born baby’s basic right to medical care.

The Duty to Perform an Examination

The prognosis for an extremely premature baby is not related to its vigor or lack of vigor at birth (Pierucci 2014, 432). This may be the reason why some doctors refuse to attend the delivery and examine

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these babies. Could they be motivated by a desire to avoid a disagreement with the parents, nurses, or obstetrician if the baby is vigorous or more mature than expected? The very presence of a neonatologist in the delivery room might encourage revisiting the decision to withhold life-sustaining interventions.

Obstetricians want a neonatologist to be present at the delivery of extremely premature babies because pregnancy dating is imprecise. Ultrasonography after twenty-one weeks can be off by fourteen days in either direction (ACOG Practice Bulletin No. 98 2008, 951), so a baby thought to be twenty-three weeks could actually be twenty-one weeks or even twenty-five weeks. Inaccuracy in antepartum dating invalidates the published periviability guidelines because the decision-making process is based solely upon gestational age. Parents who opt for palliative care believing that their baby is only twenty-three weeks might reconsider when they discover that their baby is actually twenty-five weeks. The lack of a neonatologist to assess the baby at birth fails to provide that "safety net" of care that could prevent needless deaths.

Legal Considerations

Not only is it unethical, it may be illegal to refuse to examine a distressed premature baby born in the hospital. All "born alive" babies are entitled to treatment (Sayeed 2005, e578), and withholding an examination of these babies is an apparent violation of the Emergency Medical Treatment and Labor Act (EMTALA) which states that a hospital must provide a medical screening examination for all newly born, distressed premature babies. The lead author of the published periviability guidelines agrees, "all that [the law] says is that any birth in the United States needs to be evaluated by a physician" (Wolfberg 2012, 85), yet there are neonatologists who will not examine a newly born baby destined for palliative care. Hospitals violating EMTALA regulations may be subjected to fines and prohibited from participating in all Centers for Medicare and Medicaid Services programs and services.

Conclusion

In order to decrease the incidence of disabilities, some doctors encourage withholding life-sustaining interventions from extremely premature babies. A doctor may not feel obligated to perform an examination at birth for a baby predestined to receive only palliative care, but refusing to examine a distressed premature baby after an emergency delivery in the hospital is unethical and may be illegal. These potential EMTALA violations may subject the hospital to being

financed and barred from receiving future reimbursement for the health-care costs incurred by treating Medicaid and Medicare participants. Having doctors present at the birth of premature babies has the potential to save many lives as well as to provide comfort to the parents that all means were taken to save their babies.

Note

1. While the author was a member of the active medical staff at Legacy Salmon Creek Hospital (2005–2016) in Vancouver, Washington, USA, neonatologists did not take in-house call and they would not attend the birth of a baby destined for palliative care.

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