

*Emergency Department's (ED) Case of the Month is a series of articles discussing topics important to family physicians working in the ED. This department covers selected points to help you avoid pitfalls and improve patient care in the ED. Submissions and feedback can be sent to [diagnosis@sta.ca](mailto:diagnosis@sta.ca).*

# Case of the month

## The Ethical Dilemma: When Patients Refuse Care

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**Y**ou are working by yourself in a small emergency department (ED) on a busy Friday night. The nurse stops you between patients to tell you that the intoxicated man with the head laceration is about to leave without being seen. You are worried that he may not be making a good decision, so you decide to talk to him. You discover that the large laceration on his forehead is the result of a fall down a large number of concrete stairs. He was unconscious for a period of time, and doesn't remember much of what happened before the fall. He admits to drinking between 10 and 12 beers tonight. He is tired of waiting and insists on going home.

You are worried that he has a serious head injury and that he does not understand the implications of refusing medical care. However, after you explain your concerns to him, he is able to tell you (albeit with a slight slur) what the possible risks of leaving are, and that he is willing to accept these risks. He says that if you don't let him leave, he will sue you for assault, battery, and unlawful confinement.

### Questions:

1. **If a patient wants to leave the ED, what are your ethical and legal responsibilities?**
2. **How do you assess capacity?**
3. **If someone has been drinking, are they still capable of making their own treatment decisions?**
4. **Does the potential seriousness of the patient's injury influence the way you assess capacity?**
5. **Can the patient sue you if you hold them against their will?**

When negotiating treatment decisions, and particularly when recommended care is refused, physicians must ensure their patients are well informed, and have the ability to understand the decisions they make (Table 1). Patients who refuse care pose a significant challenge in the emergency setting because it may not be clear if a physician-patient relationship has been established (if they leave before making personal contact with a physician). The patient is rarely known to the doctor, and the implications of refusal may be very serious. Also, the physician usually has many competing demands, making a proper capacity assessment difficult.

Table 1

### The Elements of an Informed Refusal of Care: (DDUV)

1. **Decision-making capacity:** Patient can appreciate implications of decisions.
2. **Disclosure:** All relevant benefits, risks and alternatives are explained to the patient.
3. **Understanding:** The patient understands the information given.
4. **Voluntariness:** The patient's decision is not coerced.

**It is important that patients can do more than just repeat the risks of refusing care.**

Table 2

### Decision-Making Capacity

**A person has decision-making capacity if they:**

1. Understand the options that are available to them.
2. Understand the consequences of acting upon the options.
3. Can justify decisions within the context of a relatively stable set of values.

#### **1. If a patient wants to leave the ED, what are your ethical and legal responsibilities?**

Emergency physicians are not expected to run to the waiting room and convince every person who wants to leave that they should come back. However, when they become aware of a specific patient's situation, a physician-patient relationship is probably established. When the nurse told the physician that this man wanted to leave, and that he had a potentially serious medical problem, this created an ethical and legal obligation to assess the patient and ensure he understood the implications of his decision.

#### **2. How do you assess capacity?**

There is no simple tool or form to assess capacity (Table 2). It is important that patients can do more than just repeat the risks of refusing care. We need to ask why they are willing to take these risks and insure their decisions are consistent and coherent. A good example is the bleeding patient who refuses a blood transfusion. If they refuse because they are acutely psychotic and delusional, then we should question their capacity, and identify a substitute decision-maker. If they refuse it because they have lifelong, widely shared religious beliefs that prohibit blood transfusions, they are probably capable and the decision should be respected.

#### **3. If someone has been drinking are they still capable of making their own treatment decisions?**

Capacity is situation-specific and can fluctuate over

time. It may be influenced by disease, drugs, alcohol, and many other factors. While intoxication will make it more difficult for this patient to understand the consequences of his decisions, it does not mean he is automatically incapable. It does mean that the physician must be particularly careful when assessing capacity and documenting his/her findings.

**The more serious the implications of a decision, the greater the capacity a patient must demonstrate.**

**4. Does the potential seriousness of the patient's injury influence the way you assess capacity?**

While the potential seriousness of the injury should not change the way you assess capacity, it will affect the way you interpret the results. The more serious the implications of a decision, the greater the capacity a patient must demonstrate. If this patient suffered a superficial laceration to the arm and no loss of consciousness, he could probably be allowed to leave with a dressing. If the patient has a life-threatening

injury, a higher standard should be applied.

**5. Can a patient sue you if you hold them against their will?**

This patient can sue you no matter what you do. However, if you have carefully assessed capacity, found it to be lacking, and have done only those things that are necessary to preserve life and limb while searching for his substitute decision-maker, it is very unlikely you will be found liable. It is very important to clearly document your assessment. If you let the patient leave without properly assessing capacity, a poor outcome ensues, and it was felt that the patient was incapable, you are much more likely to be sued (and sued successfully) for negligence. **Dx**