

Clinical Cases

Obtaining Asylum from Partner Abuse: the Physician's Role

Physicians can take an active role in helping victims of domestic partner abuse receive the medical care and emotional support needed.

Commentary by Karin Kalkstein, MD, Nalaini Sriskandarajah, MD, MRCPsych, and Sai Sriskandarajah, JD

Mrs Niro came into the clinic with her cousin, Cheryl, to see Dr Angela Cartwright. Mrs Niro had left her home country 1 month before to live with Cheryl, Cheryl's husband, and their 3 children in the United States.

According to Cheryl and Mrs Niro, Mrs Niro's husband has been abusing her since the day they married 6 years ago.

"He gets angry if he has a bad day at work or if he loses money on a bet or if the food is a little cold," Mrs Niro explains. "When he starts to get angry I can't do anything to calm him down. He hurt my right arm and broke my nose. My back is always sore from where he hit me with a chair."

After the latest episode, Mrs Niro spent a week in the hospital. The doctors were willing to release Mrs Niro after 2 days, but she convinced one of the doctors to keep her for the rest of the week for "observation" so she could avoid going home while her husband cooled off. This also gave Cheryl more time to get a vacation visa for Mrs Niro to come to the United States. Mrs Niro doesn't want to return home because she knows if she does her husband will kill her. Cheryl wants Mrs Niro to apply for asylum.

Dr Cartwright examines Mrs Niro and takes a medical history. Dr Cartwright sees signs of eye damage and makes a note for an ophthalmologic consultation. Mrs Niro cannot hear very well out of her left ear, and x-rays show signs of fractures to her nose and collar bone that are not fully healed. One of her shoulders has a number of scars. Mrs Niro says these are from when her husband hit her with a bottle.

Dr Cartwright asks Mrs Niro if she calls the police or if she has ever pressed charges against her husband.

"Why would I call the police? Everybody knows they won't do anything to help me. Maybe they will agree with me that I have bad luck to have such a husband, but they won't help me. Besides, that will just make him more angry."

Commentary 1

by Karin Kalkstein, MD

Physicians have traditionally been resistant to diagnosing conditions for which they have no treatments. Historically, domestic violence has fallen into this category. Over the last generation though, most US states have developed legal assistance, police protection, hotlines, and shelters for victims of family violence. Knowing about these resources, doctors now feel somewhat more comfortable asking their patients about abuse and referring victims for available help. Perpetrators of spousal abuse are generally resistant to interventions to change their behavior, so health professionals usually encourage victims to leave the abusers. When a woman tries to leave, the level of abuse often escalates, so outside assistance is often needed.

Immigrant women, however, do not have the same legal support available to them as US citizens do. Rather than supporting such a woman's independence, the immigration laws impair her ability to leave her husband. Many immigrant women must stay with their husbands or be deported. They may be legally forbidden to work, keeping them economically dependent on the abuser. Likewise even legal immigrants may be ineligible for public assistance that provides a safety net for American women. In order to be able to stay in this country, and to access social services if needed, an immigrant must have an independent immigration status. An application for asylum may be the only route to gain this status.

The legal situation of asylum for victims of gender-related persecution has been in evolution, with significant changes over the last decade. In 1995 the Immigration and Naturalization Service issued guidelines recognizing this category of asylum seeker or asylee. The following year a Togoan woman who fled to avoid female genital mutilation was granted asylum based on this category. In 2001 the Department of Justice applied this reasoning to grant asylum to a Guatemalan woman fleeing a violent husband. Gender-related persecution is recognized only in a guideline but not in any regulation, so rules are still being interpreted on a case-by-case basis.

Asylum: the Road to Health

Mrs Niro is fortunate that she is in the United States legally, if temporarily. Asylum applicants who arrive in the United States without a valid visa face additional roadblocks. Many will face immediate deportation under rules of expedited removal, without having their claims heard before an immigration judge. Those not immediately deported may be detained until they can demonstrate a credible fear of persecution. This can mean months of incarceration in immigration detention or in jails, even for those who have family willing to assume responsibility for them. This detention is particularly hard for women with young children, who may be separated from them and even placed in foster care for long periods of time. Women are sometimes retraumatized by the experience of detention, and are susceptible to abuse by guards and others.

As a physician, Dr Cartwright may be the most authoritative figure that Mrs Niro has approached for help. Since police and courts in her own country were unwilling to intervene, Mrs Niro probably will not approach the US police or court system. Doctors have aided her in the past, as when they hospitalized her to keep her safe. For Dr Cartwright to properly treat her patient, she must address her legal situation, and have knowledge of social agencies and basic understanding of asylum laws. Asylum in the United States is available to people who "have been persecuted or have a well-founded fear of persecution on account of their race, religion, nationality or membership in a particular social group or political opinion" [1]. This is commonly referred to as "political asylum," a misnomer which unfortunately keeps women like Mrs Niro from considering this option. She clearly does not view her situation as a political one. Domestic violence has for long been thought of as a private issue confined to a particular family. In recent years however, feminists and legal scholars have described domestic violence as one of many ways of imposing male domination over women. Other examples include female genital mutilation, rape or threat of rape, honor killing, and forced marriage.

Mrs Niro's symptoms are clear-cut and obviously stem directly from her abuse; women in her situation may present with anxiety and depression, or with somatic complaints stemming from their distress, where the diagnosis of domestic abuse is harder to detect. Her physical scars, while of course unfortunate for Mrs Niro, may make it easier to prove her persecution in an immigration court.

Mrs Niro is fortunate to have physically survived her abuse, successfully left her husband, and reached physical safety. She has also found a sympathetic relative who is willing to help and is knowledgeable about asylum. Dr Cartwright can now help her take the next steps. She can write a medical affidavit to document her injuries and correlate them with the violence that Mrs Niro described. She can encourage her to find an attorney and proceed with her asylum application. The application must be filed within 1 year of arriving in the United States. Some immigrant advocacy organizations will provide low-cost legal referrals. Finally, the physician can provide ongoing medical care and screen for complications, including psychological sequelae of abuse. Dr Cartwright will also be able to provide the psychosocial support that Mrs Niro and Cheryl are going to need in the coming months.

Reference

1. Immigration and Nationality Act, 8 USC §1186b (2002).
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Commentary 2

By Nalaini Sriskandarajah MD, MRCPsych, and Sai Sriskandarajah, JD

From the case history, one assumes that Mrs Niro came to the clinic for treatment of her injuries. She is, however, reporting a serious problem with intimate partner abuse (IPA), and there is an indication that she might apply for asylum. In formulating a comprehensive treatment plan for her, Dr Cartwright has to consider other factors in addition to the patient's clinical needs. Dr Cartwright's own level of awareness about IPA issues will influence her decisions regarding this patient.

Physical examination revealed recent as well as old injuries and some permanent damage. Dr Cartwright plans to refer Mrs Niro for the necessary medical consultations. The health consequences of IPA are psychological as well as physical [1]. Dr Cartwright should ask about psychological symptoms or obtain a psychiatric consult. Mrs Niro will need support and nurturing if she is to regain her confidence and self-esteem. Many medical centers offer support services for trauma survivors and crime victims, but not everyone is eligible for those services. As we will see, a grant of asylum can help with that.

Cultural Awareness

Dr Cartwright asks Mrs Niro whether she ever reported her husband or pressed charges. By doing so, she is showing empathy and sensitivity. However, she is applying US norms to Mrs Niro. Legal recourse may not have been a realistic option in Mrs Niro's country of origin.

Many developing countries do not have laws protecting victims of IPA. Even in countries where there is protection, religious and cultural beliefs sometimes run counter to provision of safety for women. Despite laws that protect them, women are vulnerable in countries with rigid gender roles, inequalities, and cultural norms that support a man's right to inflict violence. Mrs Niro's statement that the police would probably do nothing except remark that she is unfortunate indicates how IPA is viewed in Mrs Niro's country and explains her failure to involve the law as a self-protective response [2]. If Dr Cartwright is unaware of that country's situation and cultural biases, she may tend to doubt the veracity of Mrs Niro's report. This could lead to less than adequate health care for Mrs Niro and incomplete protection of her human rights.

Even in the United States, physicians who are not well versed in the law continue to overlook such abuse. Since the mid-1980s, many states have enacted laws to protect victims of IPA. Some states have mandatory reporting. There is also much debate over whether involving law enforcement truly provides protection [3].

It is likely that Mrs Niro, exposed to chronic abuse by her husband, has difficulty trusting people [1,3]. To provide treatment in a sensitive manner, Dr Cartwright needs to gain her trust. She could explore the political, cultural, and religious beliefs of Mrs Niro's country with her to gain understanding and build trust. Physicians for Human Rights, Human Rights Watch, and other watchdog NGOs as well as US government Web sites also provide accurate and pertinent information to help this part of the asylum process [4-7].

Physician's Role in the Asylum Application Process

If Mrs Niro applies for asylum, the physician will be expected to provide a report of her medical findings and to indicate whether they are compatible with IPA. However, the burden of proof of IPA is not Dr Cartwright's.

Mrs Niro indicated that she doesn't want to go back to her country. If she returns, she could face further, possibly more severe, violence or even death. Regardless of Dr Cartwright's views about spousal abuse as a cause for asylum, failure to give adequate consideration to Mrs Niro's safety is suboptimal medical care. Justice requires Dr Cartwright to ensure that Mrs Niro is not discriminated against because of the physician's bias.

Conversely, Dr Cartwright might conclude that Mrs Niro should be kept away from her husband. In the United States, if the victim is fearful, such separation is possible by referring her to a women's shelter or a safe house. In this instance, the alleged abuse took place in another country where such protection is probably unavailable. Asylum remains the only reasonable option.

If Dr Cartwright wishes to help, she now needs to educate herself about the asylum application process and its pitfalls. It would be tragic if the attempt to help resulted in more harm. *Primum non nocere*—first do no harm—is one of the fundamental tenets of medical practice.

Asylum Seekers Face Legal Hurdles

Regrettably, Dr Cartwright will find that the US immigration laws are murky on the issue of gender asylum. Although women are identified as a group whose human rights are violated in many countries, women who apply for asylum due to IPA are often denied asylum. If returned, these women are at a greater risk of harm.

Under US immigration law, Mrs Niro is in the country under "visitor" status; as such, she is only permitted to remain in the country for a limited period of time. However, Mrs Niro may legally apply for asylum while she is in the United States as a visitor. The Immigration and Nationality Act (INA) requires an applicant for asylum outside her country of citizenship or habitual residence to be unwilling to return to that country because of persecution, or justifiable fear of persecution, on the basis of her "race, religion, nationality, membership in a particular social group, or political opinion" [8]. Whether victims of domestic violence are members of "a particular social group"—and therefore qualify for asylum—is a subject of significant controversy. A case in point is the story of Rodi Alvarado [9].

Rodi Alvarado was a Guatemalan woman who came to the United States in 1995. Alvarado applied for asylum on the ground that she was the victim of rape and brutal, unrelenting violence at the hands of her husband. Alvarado was granted asylum by a US immigration judge in 1996, but the Board of Immigration Appeals overturned the judge's decision. Janet Reno, who was then US Attorney General, overturned the board's decision, reinstated approval of Alvarado's application, and issued proposed regulations making domestic violence an express basis for asylum. The US Departments of Justice and Homeland Security are currently determining whether the regulations proposed by Reno should be put into effect. In February 2004, the Department of Homeland Security filed a brief asking the Attorney General to issue regulations that would allow gender asylum for women who are victims of IPA.

Under current United States law it is unclear whether Mrs Niro would be granted asylum on the ground that she is a victim of IPA. Currently, immigration is under the jurisdiction of the Department of Homeland Security (DHS). Further clarification of the laws will depend on how the Alvarado case is resolved [10-11].

Awareness of asylum laws will help Dr Cartwright make decisions about her role in the process. Providing comprehensive health care has led to collaborations with legal and other professionals as well. Mrs Niro has, under the 1948 UN Declaration of Human Rights [12], the right to live without fear of harm. If Dr Cartwright wants to help uphold this right, she must provide the necessary medical information to the legal professionals involved in the case when Mrs Niro requests her to do so. Dr Cartwright must also make herself available to testify regarding her medical findings, if called upon to do so.

Finally, the economic, political, and human rights status of foreign visitors like Mrs Niro is quite controversial. The government does not provide any direct financial support to asylum seekers. As a physician, Dr Cartwright should follow the rules established for such patients at the clinic, at the same time making sure that Mrs Niro is not left

without health care. There are some faith-based organizations that assist refugees [13]. Commonly, asylum seekers are dependent on their relatives or fellow countrymen (sometimes strangers) until asylum is granted and they can legally work.

Dr Cartwright should approach this case with the 4 basic principles of medical ethics in mind; ie, respect for patient autonomy, beneficence, nonmaleficence, and justice. Dr Cartwright needs to be caring, empathic, trustworthy, and fair in order to apply these principles to Mrs Niro's care in a sensitive manner.

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See also Immigration and Nationality Act, 8 USC §1186b (2002).
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13. See eg, Hebrew Immigrant Aid Society, www.hias.org; Catholic Charities, <http://www.catholiccharitiesusa.org/>. Accessed Aug. 8 2004.

Other Web Site

- US Citizenship and Immigration Services. <http://uscis.gov/graphics/index.htm>

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