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Journal Discussion

# Children as Live Kidney Donors for Siblings

## Courts need to consider the potential risks and benefits to a minor who donates a kidney to a sibling, the probability of a successful outcome, and possible alternatives.

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According to Dr. Aaron Spital, studies suggest that kidney transplantation from living donors offer the best results for pediatric patients with end-stage renal disease. Fortunately, many parents are willing to donate a kidney to improve the health of their child. Not all parents can donate, however, because of tissue incompatibility with their child, and not all patients have such willing parents. Under some circumstances, pediatric patients in need of a renal transplant look to siblings for a kidney donation [1].

Organ transplantation involving living, related minors is ethically complex for several reasons. First, most medical decision-making for minors is based on the therapeutic value of the procedure in question. In the case of live organ transplantation, the minor donor does not receive any physical benefit from the surgery. Second, the legal category of "minor" encompasses a wide age range and varying levels of maturity, posing questions such as how to treat a 7-year-old potential donor versus a 17-year-old potential donor. Third, in cases where the minor donor and recipient are siblings, the conventional models of medical decision-making become more complicated.

Since living donor transplantation is controversial, several cases of sibling-to-sibling kidney transplantations have appeared in US courts. Many of the court rulings have approved such transplantations, even those using minor donors, on the grounds that the donor will receive psychological benefits as a result of the procedure. Robert Crouch and Carl Elliott state that courts claim to base their decisions on the best interests of the donor; however, since organ transplantation provides no physical benefit to the donor, the courts broaden the construct of "best interests" by including psychological benefits [2].

Spital believes that basing court decisions solely on psychological effects is problematic. How can a judge determine what degree of psychological benefit is sufficient to justify the risks involved in transplantation [1]? It is also impossible to predict with complete confidence the psychological influence that organ transplantation will have on a child. Even if the courts' identification of positive psychological effects is accurate, Crouch and Elliott believe that it is most likely a young child will not experience those benefits due to his or her mental, emotional, and moral immaturity. But, they argue, an adult sibling donor is mentally developed enough to wish to donate for reasons other than his or her own psychological benefit. In this context, the authors discuss "self-regarding interests" and "other-regarding interests." "Self-regarding interests are those that relate exclusively to the well-being of the agent himself or herself. Other-regarding interests involve the desires that an agent has for the well-being of another person" [2]. Crouch and Elliott suggest that, although the intertwining of self-regarding interests and other-regarding interests is reasonable in a competent adult, in many cases it is unclear whether a potential child donor has developed an other-regarding interest in the sibling recipient. If the other-regarding interest is weak or does not exist, then many of the psychological benefits identified by the courts are no longer valid.

Although young children may not fully comprehend the implications of undergoing organ removal, older minors may be mature enough to participate in making such an important decision [1]. The Council on Ethical and Judicial Affairs of the American Medical Association has stated: "In general, adolescents 14 and above appear mature enough to make

decisions about their medical care, but [capacity] must be evaluated on a case by case basis" [3]. The council also recommends using the courts to help assess and confirm the minor's competence and maturity. However, Crouch and Elliott strongly critique the grounds on which courts' have allowed sibling kidney transplantation from minor donors. In *Masden v Harrison*, the justice approved of a kidney transplant between 19-year-old twins, legally still minors, since the age of majority in Massachusetts was 21 [4]. The decision was made on the basis that the death of one of the twins would have a profoundly negative psychological impact on the other. This same line of reasoning was used in *Hart v Brown* to support a kidney transplant between a 7-year-old girl and her twin sister [5]. Crouch and Elliott criticize the courts' use of the same psychological benefits argument in 2 cases dealing with minor donors of vastly different maturity levels.

Several court decisions regarding live organ donation from children have been based upon the formal constructs of the "best interests" standard and the sovereign, independent, and self-interested human agent. However, according to Crouch and Elliott, this is an inaccurate description of the human agent among siblings, which is often the relationship between a minor donor and recipient. Family members love each other and are of priceless importance in each other's lives. "To attempt to cram a formal relation into an intimate context does violence to the morally significant aspects of the family relationship," the authors say [2]. Crouch and Elliott believe that a more accurate representation of the human agent within the family recognizes that the best interests of family members are not independent and self-interested but rather strongly entwined.

Crouch and Elliott do not imply that kidney transplantations between living, related minors should never occur. Rather, they argue that justification for the transplantation must recognize that it is not the child donor's best interests as an individual that are being served, but instead the interests of the family as a whole. They also caution against children being unduly influenced by parents who must balance the best interests of the child donor with those of the related recipient. In short, they question the grounds on which previous court decisions regarding child donors have been made and urge that courts consider the potential risks and benefits to the donor, the probability of a successful outcome, and possible alternatives.

## Questions for Discussion

1. Do you agree with Council on Ethical and Judicial Affairs' recommendation that courts help assess and confirm a minor's competence and maturity when a sibling-to-sibling organ transplantation is at issue?
2. Do you agree with Robert Crouch's and Carl Elliott's assessment that young children most likely have not developed "other-regarding interests"? How do you think the courts can assess whether or not this psychological construct has developed?
3. Do you believe that parents are able to promote the best interests of the child donor while simultaneously considering the well-being of the related recipient? Based on your answer, how much value do you think the parents' recommendations should have in determining whether or not to proceed with the organ transplantation?

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