



7. JEHOVAH'S WITNESSES AND BLOOD TRANSFUSIONS

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Introduction - The Issue

OPA may be requested to give advice and/or investigate a guardianship application and/or make decisions as guardian in circumstances where there is dispute, disagreement, or uncertainty with respect to blood transfusions and the use of blood products for people who are Jehovah's Witnesses.

Generally inquiries will arise when the health service is uncertain of its position with respect to a treatment decision, or when there is uncertainty as to the extent of the person's commitment to the faith, the extent of their decision-making disability and the rejection of blood transfusions.

Relevant Opa Guidelines

10. Refusal of Medical Treatment: consent to palliative care.
Consent & Refusal to Medical Treatment - Legal Framework – Summary [See g-drive/legal/Consent to Medical Treatment/Legal Framework on Consent to Medical Treatment 010103]

Background To The Law

(A) Relevant Legislation

- *Guardianship and Administration Act 1986*
- *Medical Treatment Act 1988*
- *Human Tissue Act 1982*

(B) General Proposition On The Right To Refuse Medical Treatment

An adult who has capacity has the right to refuse any medical treatment. This is the position at common law and under the *Medical Treatment Act 1988*. Therefore an adult may refuse a blood transfusion, even in emergency circumstances.

Where a person provides medical treatment (such as a blood transfusion) against the decision of an adult with capacity, that person has committed an assault. The assault may give rise to either criminal charges or to a civil action for battery.

(C) Emergency Situations And The Right To Refuse Medical Treatment

In an emergency where a person is unable to express their consent to medical treatment a medical practitioner may provide treatment:

- To save a patient's life;
- To prevent serious damage to a patient's health;
- To prevent suffering or continued suffering from significant pain or distress.



However, a medical practitioner cannot provide emergency treatment where s/he knows that the patient does not wish to receive that treatment.

(D) Rejection Of Blood Transfusion

An adult with capacity has the right to refuse a blood transfusion.

In an emergency a person can be denied a blood transfusion if they have previously made it known that they do not want a blood transfusion even if that be necessary to save their life. In 1987, the Supreme Court of Ontario in the case of **Malette** found that a doctor who administered a blood transfusion in emergency circumstances to a patient carrying a card indicating her wishes not to have a blood transfusion, had committed an assault and was liable to damages notwithstanding the blood transfusion was administered in emergency circumstances, was done conscientiously and appropriately in terms of her medical condition, and consequently saved her life. The trial judge and the Supreme Court both found that an assault had taken place and awarded damages against the doctor. (Note that in some other cases, Jehovah's witness patients have failed in claims of battery).

(E) Children

Section 24 of the *Human Tissue Act 1982* enacts that a medical practitioner who gives a child a blood transfusion against the express wishes of the parent is not committing a criminal offence. The blood transfusion must be treatment for a condition the child has and without the transfusion the child is likely to die.

(F) When People Lack Capacity To Make Medical Decisions

When an adult lacks capacity to decide about medical treatment it is necessary to find a substitute decision maker to consent on their behalf. The substitute decision makers could be:

- An agent under the *Medical Treatment Act*;
- A guardian under the *Guardianship and Administration Act*.
- The person responsible under the *Guardianship and Administration Act*;

In certain circumstances medical treatment can proceed even where there is no consent given, this is under section 42K of the *Guardianship and Administration Act*.

Only an agent under the *Medical Treatment Act* or a guardian under the *Guardianship and Administration Act* can refuse medical treatment. Other persons responsible can merely refuse to consent to treatment, they cannot refuse treatment.

Background To The Jehovah's Witnesses

(A) Where Does The Rule Against Blood Transfusions Come From?

The Jehovah's Witnesses is a Christian religious denomination. They believe that whole-blood transfusions, transfusions of major blood components, (eg red blood cells, plasma, platelets and white blood cells) and pre and intra-operative storage of blood for later autologous transfusion is forbidden by Biblical passages such as "Only flesh with its soul – its blood – you must not eat" (Genesis 9:3,4); "[You must] pour its blood out and cover it with dust" (Leviticus 17: 13,14); "abstain from ...what is strangled and from blood." (Acts 15: 19 – 21).(Refer Attachment A)



They believe that to breach these rules will damage their relationship with God.

The exception to this rule is non-blood volume expanders such as Haemaccel, Saline, Ringers Lactate, Dextran, etc.

In addition to these Jehovah's Witnesses religious understanding does not absolutely prohibit the following so the person must decide personally according to conscience whether he/she will accept the following:

- Small blood fractions such as immunoglobulins, haemophiliac preparations, albumin, cryoprecipitate, SPPS.
- The following surgical techniques on the condition that there is a continuous extra-corporeal circuit: Haemodilation, Heart-lung dialysis, intra and post-operative blood salvage and reinfusion, and renal dialysis.
- There are also a number of IV fluids that are acceptable for use with Jehovah's witnesses patients (Refer Attachment C)

(Jehovah's Witnesses (2002) Guidelines for their non-blood medical management)

(B) “No Blood Cards”

In Victoria, most Jehovah's Witnesses sign a statement saying they do not wish to receive blood products. They are advised to carry a card stating this. This card, called a No Blood Card, is reviewed annually (Refer Attachment B). The No Blood Card may indicate who is the holder of a Power of Attorney for the patient.

The absence of a No Blood Card does not establish that the person is not a Jehovah's Witness, nor does it establish that they are eligible to receive a blood transfusion or blood products. However, the card, without any evidence to suggest that the card is not current or that the person has changed their mind, is a legitimate expression of the patient's wishes. In some cases there may be a card which is not current (dated more than a year earlier). If the holder has subsequently lost capacity, the card represents an indication of the person's wishes prior to becoming disabled. This is also the case when a person without capacity has signed a card, unless there is a suggestion that the card has been signed under duress.

The case of **Malette** in the Supreme Court of Ontario explored the legitimacy of a No Blood Card as an instruction to the health service and doctor, and found that an undated and unwitnessed card signed by the patient was an appropriate and bona fide instruction and refusal of medical treatment. There are no Australian cases providing legal authority on these issues. It is presumed the same interpretation may well apply in Victoria, unless there is clear evidence that the patient had changed their mind, cancelled the card, or arrived at a different decision with respect to blood transfusions.

(C) Use Of Medical Powers Of Attorney, Enduring Guardianship And Hospital Liaison Committees In The Jehovah's Witnesses' Community.

The Jehovah's Witness community encourages members to take out Medical Powers of Attorney and Enduring Guardianship so that decision-making for members is kept within the community.



The Jehovah's Witnesses have set up Hospital Liaison Committees which have four functions:

1. to help Witnesses find cooperative doctors and surgeons prepared to treat them without using blood;
2. to be on hand for patients and their families in difficult situations;
3. to make available to doctors and hospitals articles from recognized professional journals on alternative non-blood medical management; and
4. to liaise with doctors, surgeons, and specialists to facilitate their joint consultation where appropriate.

(24 Hour emergency number for the Hospital Liaison committee is 0414 842 827)

OPA Policy

1. Blood transfusions administered against the express wishes of a Jehovah's Witness may constitute an assault including blood transfusions which take place in an emergency, when it is known that the person is a Jehovah's Witness and that he/she does not wish to receive a blood transfusion.
2. In emergency and life-saving situations, blood transfusions should not be administered when the person's wishes to refuse treatment with respect to blood transfusions are known.
3. Wherever possible the current wishes of the person concerned must be fully explored by speaking with them directly without other members of the family or members of the faith present. The possibility of a person changing their mind when faced with the likelihood of serious disability or death is real.
4. If there is uncertainty or dispute as to the person's wishes, sometimes expressed as disagreement over their adherence to the faith, the following matters should be explored
 - Does the patient carry a No Blood Card?
 - Has the person appointed a Medical Enduring Power of Attorney with or without instructions regarding blood transfusions?
 - Has the person signed a Refusal of Treatment certificate lodged with the VCAT-Guardianship List?
 - Has the person left instructions with members of the family regarding blood transfusions?
 - Has the person left instructions with their general practitioner regarding blood transfusions?
 - Has the person been a practising member of the faith, have they association with a church, congregation or minister, and could any of these sources verify their adherence to the practice of no blood transfusions?
 - Has the medical service explored the possibility of alternate products such as blood expanders or alternate treatments to blood transfusion, when these products or treatments are acceptable to Jehovah's Witnesses?



5. In situations where the medical procedure may require a blood transfusion but this cannot be determined prior to the procedure being commenced, the decision with respect to the blood transfusion should not change - that is, a Jehovah's Witness who has indicated their wish not to receive a blood should not receive blood transfusion, even if this is required for emergency treatment or during another treatment or procedure.
6. Within any faith there is a range of adherence to the stated precepts of the religion by the members. No person is wholly defined by their membership of a church and membership of the Jehovah's Witnesses should be considered as only one, albeit important, influence in forming a person's views. Verification of a person's adherence to the faith, especially in circumstances where there is no available card, requires investigation and verification. In cases where there is dispute or disagreement as to the person's commitment to the faith and their opposition to blood transfusions, an application for guardianship should be made when the person has a cognitive disability. As the medical decisions involving Jehovah's Witnesses usually concern refusal of treatment, they cannot be made by a Person Responsible under s42 of the Guardianship and Administration Act 1986.
7. If OPA as guardian is required to make a decision with respect to a dispute regarding Jehovah's Witness and blood transfusions, it would be desirable to make contact with the Jehovah's Witness hospital liaison committee, if the hospital has not already done so, to gain advice regarding the matters under dispute in this case. The hospital should have access to the Jehovah's Witness liaison committee in their own right. A statement from the Hospital Liaison Committee for Jehovah's Witnesses can be found in the OPA Systemic File 'Jehovah's Witnesses'.
8. A guardian should not refuse a blood transfusion for a person who is clearly stating that they wish to receive the transfusion, notwithstanding that they have been found by the Tribunal to not be legally competent to make that decision. In such circumstances the guardian should satisfy her/himself that the person understands that this represents a change from their previous view. In this situation (and in 2(above)) an urgent request to VCAT for advice under s30 of the Guardianship and Administration Act 1986 is advised to provide legal protection for the guardian and the hospital.
9. Through Community Education, the Advice Service and in the management of casework, OPA staff should promote the importance and advantages for Jehovah's Witnesses in appointing an Enduring Power of Attorney (Medical Treatment) rather than relying on a No Blood Card.

Other Relevant Materials

(Refer OPA systemic file Jehovah's Witnesses 8567)

1. Hospital liaison committee for Jehovah's Witnesses.
2. *Malette v Shulman* (1987) 47 DLR (4th) 18 (Ont. CA)



3. *Human Tissues Act 1982.*
4. Pamphlet “Jehovah’s Witnesses and the question of blood”.
5. Jehovah's Witnesses (2002) Guidelines for their non-blood medical management.
6. Watch Tower (2002) Transfusion Alternative Health Care: Meeting Patients Needs and Rights (Video)
7. Watch Tower (2001) No Blood; Medicine meets the challenge (Video)
8. Watch Tower (2000) Acknowledgements and Bibliography for Transfusion Alternative Strategies (Video)



Articles:

1. Stewart C (2000) “Qumsieh’s Case, Civil Liability & the Right to Refuse Medical Treatment” Jnl of Law & Medicine, Vol. 8, Aug 2000, 56-67.

Cases:

1. Re F [1990] 2 AC 1 @ 76 (Intervention may not be justified on necessity basis/principle when it is contrary to the known wishes of the assisted person).
2. Qumsieh v GAB (1998) 14 VAR 46 (controversial case due to reluctance of judges to discuss issues concerning the right to refuse treatment).



Attachment A

JEHOVAH'S WITNESSES' RELIGIOUS POSITION ON MEDICAL THERAPY

Jehovah's Witnesses avail themselves of the various medical skills to assist them with their health problems. They do not adhere to so-called faith healing and are certainly not opposed to the practice of medicine. They love life and want to do whatever is reasonable and Scriptural to prolong it.

ABORTION

Deliberately induced abortion simply to avoid the birth of an unwanted child is the wilful taking of human life and hence is unacceptable to Jehovah's Witnesses. If (at the time of childbirth) a choice must be made between the life of the mother and that of the child, it is up to the individual concerned to make that decision.

AUTOTRANSFUSSION

***Immediate intraoperative autotransfusion* is permitted by many Witness patients when the equipment is arranged in a circuit that is constantly linked to the patient's circulatory system and there is no storage.**

BLOOD STORAGE

Jehovah's Witnesses do not accept *preoperative collection, storage, and later reinfusion*. Such stored blood is no longer considered part of the person and should be disposed of in line with God's Law: "You should pour it out upon the ground as water"-Deuteronomy 12:24.

BLOOD TRANSFUSIONS

We have definite objections to blood transfusions for religious reasons, but many also have medical objections. Witnesses are deeply religious people who believe that blood transfusion is forbidden by Biblical passages such as: "Only flesh with its soul –its blood-you must not eat" (Genesis 9:3, 4), "[You must] pour its blood out and cover it with dust" (Leviticus 17:13, 14); and, "Abstain from ... fornication and from what is strangled and from blood."-Acts 15:19-21.

While these verses are not stated in medical terms, Witnesses view them as ruling out transfusion of whole blood, packed RBCs, and plasma, as well as WBC and platelet administration. However, Witnesses' religious understanding does not absolutely prohibit the use of fractions such as albumin, immune globulins, and hemophiliac preparations; each Witness must decide individually whether he can accept these.

HEART BYPASS

Heart bypass devices are permitted by many Witness patients as long as nonblood prime is used.

HAEMODIALYSIS

Haemodialysis is allowed by many Witness patients when no blood prime is used and there is no blood storage.



HAEMODILUTION

Intraoperative haemodilution is permitted by many Witness patients when the equipment is arranged so as to keep the blood in a constant link to the patient's circulatory system. Some physicians use this technique to reduce blood viscosity and red cell loss during surgery.

ORGAN TRANSPLANT

While the Bible specifically forbids consuming blood, there is no Biblical command pointedly forbidding the taking in of other human tissue. For this reason, each individual faced with making a decision on this matter should carefully and prayerfully weigh matters and then decide conscientiously what to do before God.

It is a matter of personal decision.

SERUMS

Serums are not forbidden; however, some Witnesses still conscientiously refuse them.

VOLUME EXPANDERS

Nonblood volume expanders are acceptable.

Jehovah's Witnesses (2002) Guidelines for their non-blood medical management.




Attachment B

MEDICAL DIRECTIVE
NO BLOOD

Allergies: _____
Current medication: _____
Medical problems: _____

MEDICAL DIRECTIVE
(signed document inside)

NO BLOOD



**IN CASE OF EMERGENCY,
PLEASE CONTACT:**

Name: * _____
Telephone: _____
Address: _____

* Holds Enduring Power of Attorney (Medical Treatment)

ALTERNATE CONTACT:

Name: _____
Telephone: _____
Address: _____

Open to signed document ▼

IDENTITY CARD

Child's Name: _____
Parents: _____
Address: _____
Telephone: _____

**IMPORTANT MEDICAL INFORMATION
ON OTHER SIDE**





ADVANCE MEDICAL DIRECTIVE/RELEASE

I, _____, make this advance directive as a formal statement of my wishes. These instructions reflect my resolute and informed decision.

I direct that *no blood transfusions* (whole blood, red cells, white cells, platelets, or blood plasma) be given to me under any circumstances, even if physicians deem such necessary to preserve my life or health. I will accept non-blood volume expanders (such as dextran, saline or Ringer's solution, or Haemacel) and other non-blood management.

This legal directive is an exercise of my right to accept or to refuse medical treatment in accord with my deeply held values and convictions. I am one of Jehovah's Witnesses, and I make this directive out of obedience to commands in the Bible, such as: "Keep abstaining . . . from blood." (Acts 15:28, 29) This is, and has been, my unwavering religious stand for _____ years. I am _____ years old.

I also know that there are various dangers associated with blood transfusions. So I have decided to avoid such dangers and, instead, to accept whatever risks may seem to be involved in my choice of alternative non-blood management.

I release physicians, anaesthetists, and hospitals and their personnel from liability for any damages that might be caused by my refusal of blood, despite their otherwise competent care.

I authorize the person(s) named on the reverse to see that my instructions set forth in this directive are upheld and to answer any questions about my absolute refusal of blood.

Signature _____

Address _____ Date _____

Telephone _____

Witness _____

Witness _____

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As parents we are deeply interested in the welfare of our child.

We are Jehovah's Witnesses and hold strong religious convictions. Hence, we do not accept blood transfusions. It is widely known that such transfusions carry risks of hepatitis, HIV, and other health hazards. Our informed decision is to avoid these risks. We will accept non-blood expanders and pharmaceuticals that promote iron usage and stimulate the production of red blood cells. If our child suffers an accident or becomes seriously ill, please contact us immediately. We know physicians who respect our religious convictions and are available for consultation and use of modern, acceptable non-blood alternatives.

Signature _____ Date _____

Signature _____ Date _____

ie-3 As 8/91 Printed in Australia



Jehovah's Witnesses (2002) Guidelines for their non-blood medical management



Attachment C

I.V. FLUIDES ACCEPTABLE TO JEHOVAH'S WITNESSES'

	NAME	COMPOSITION
COLLOIDS		
	Gelafusine	Gelatin polymer
	Rheomacrodex	Dextran 40
	Macrodex	Dextran 70
CRYSTALLOIDS: (ISOTONIC)		
	Normal saline	Sodium chloride 0.9%
	Dextrose 5%	Dextrose
	Dextrose-saline 4% and 0.18%	Dextrose
	Dextrose-saline 3% and 0.3%	Dextrose
	Hartmann's solution	Sodium chloride-lactate compound solution
	Ringer's solution	Compound sodium chloride injection
	Darrow's solution	Sodium lactate, potassium, and saline solution
(NON-ISOTOIC)		
	Hypotonic saline 0.48%	Sodium chloride 0.45%
	Hypotonic saline 3.0%	Sodium chloride 3%
	Dextrose-saline 5% and 0.9%	(HYPERTONIC) Sodium chloride with dextrose
NUTRITION SOLUTION:		
	Synthamin 9	Amino acids
	Synthamin 17	Amino acids
	Synthamin 17 with electrolytes	Amino acids
	Vamin & glucose	Amino acids with dextrose 10%