



Jehovah's Witness Claims Surgeon Refused to Operate

Surgeon tried to talk him into accepting blood if absolutely necessary.

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How would you handle a patient who wanted and needed knee surgery but who refused on religious grounds to accept any blood products?



Frank M. Brown, MD, an orthopedic surgeon at the Asheville (N.C.) VA Medical Center, was sued by a Jehovah's Witness named William Clinton, who claimed Dr. Brown refused to operate on him and thereby violated his First Amendment right to freedom of religion. Dr. Brown says he didn't refuse, but he did try to talk Mr. Clinton into reconsidering his refusal to accept blood products under any circumstances.

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It started in 2012, when Mr. Clinton, who'd undergone a bloodless total-knee replacement in 2009, consulted with Dr. Brown and complained of recurring pain in the knee, and pain in his hip. According to court records, Dr. Brown spent 45 minutes explaining the risks and potential complications of bloodless surgery to Mr. Clinton, and discussed the possibility of using Cell Saver (which can re-infuse a patient's own blood). But he made it clear that Cell Saver was only a possibility if there was no infection in Mr. Clinton's knee. He says Mr. Clinton refused to accept the last point.

Dr. Brown says he also told Mr. Clinton that many Jehovah's Witnesses had consented to the use of blood products in life-or-death surgical situations. He says he advised Mr. Clinton to have an MRI on the painful hip and return in 2 months, but that Mr. Clinton never came back.

Mr. Clinton claims that Dr. Brown urged him to "change his religion so (he) could perform the operation with blood." He also says Dr. Brown asked his son, who was also present at the consultation, if he wanted his father to die on the operating



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table. Dr. Brown, he further claims, told his son that Mr. Clinton had a history of illegal drug use, and wondered aloud why his father would use illegal drugs but not take blood if necessary.

Ultimately, he claims, Dr. Brown flat-out refused to perform the surgery.

Two years later, Mr. Clinton went to another VA medical center and was told he needed a hip replacement. That was when he sued Dr. Brown.

Though the case raises some interesting questions, it was dismissed by a U.S. District Court for reasons having little or nothing to do with the religious component. For one, Dr. Brown was protected by the Qualified Immunity Doctrine, which insulates federal employees from personal liability under most circumstances. Also, in the absence of legislative remedies, plaintiffs may sue for constitutional violations involving the Fourth, Fifth and Eighth Amendments, but they can't do so for First Amendment violations, according to the Supreme Court.

The court did note that if the case hadn't been dismissed on the cited grounds, Mr. Clinton would have had to prove that Dr. Brown discriminated "because of" Mr. Clinton's faith, and not "in spite of" it, seemingly suggesting that doing so might have been a difficult burden.

Dr. Brown did not immediately return a phone call seeking comment.

Jim Burger

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