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OPINION

Emancipation of Minors for Donation in Living Donor Transplants: Psychologically Viable?

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ABSTRACT

Brazilian law allows the emancipation of 16- and 17-year-olds for living organ donation to family members. However, emancipation is irrevocable and raises questions about the emotional maturity of these adolescents when faced with such a complex decision. This reflective essay discusses the psychological and ethical dilemmas involved, questioning whether legal adulthood truly reflects autonomy and emotional maturity.

Descriptors: Transplantation; Medical Ethics; Living Donors; Minors; Personal Autonomy; Adolescent Psychology.

Emancipação de Menores para Doação em Transplantes Intervivos: Psicologicamente Viável?

RESUMO

A legislação brasileira permite a emancipação de jovens de 16 e 17 anos para doação de órgãos em vida. Porém, a emancipação é irrevogável e levanta questionamentos quanto à maturidade emocional desses adolescentes diante de uma decisão de tamanha complexidade. Este ensaio reflexivo discute os dilemas psicológicos e éticos envolvidos, questionando se a maioridade civil se traduz, de fato, em autonomia e maturidade emocional.

Descritores: Transplante; Ética Médica; Doadores Vivos; Menores de Idade; Autonomia Pessoal; Psicologia do Adolescente.

This essay, based on national and international literature, seeks to reflect on the issue of living organ donation by adolescents/minors. Psychologists working in the field of transplants, as all others professionals involved in living donor transplantation, must pay special attention to this sensible issue.

Brazilian legislation stipulates that any legally competent individual may donate organs for transplantation during their lifetime, provided that donation does not cause significant harm to their physical or mental health: "It is permitted for a legally competent person to freely dispose of tissues, organs, and parts of their living body for therapeutic purposes or for transplantation into a spouse or blood relatives up to and including the fourth degree"[1].

Following this premise, Ordinance No. 2,600 of October 21, 2009, which approves the Technical Regulation of the National Transplant System, in Article 50 of the section specifically addressing kidney transplants, clarifies that:

> The donation of a kidney from a legally competent living donor is permitted, provided that the legal requirements governing inter vivos donation are met. The donor must undergo thorough clinical, laboratory, and imaging evaluations and be in satisfactory health conditions, thereby allowing the procedure to be carried out within an acceptable risk threshold[2].

In alignment with these legal provisions, Resolution No. 2,217/2018 of the Medical Ethics Code issued by the Federal Council of Medicine, in Article 45, states that it is prohibited for a physician to "remove an organ from a living donor who is legally incompetent, even if authorization has been granted by their legal representative, except in cases permitted and regulated by law"[3].

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Thus, in situations where no adult donors are available, the legal emancipation of adolescents aged 16 and 17 (as provided by law) emerges as an alternative to enable living organ donation. In such cases, emancipation is classified as "voluntary" and occurs through authorization granted by both parents, or by only one parent in the declared absence of the other, formalized through a judicial order. Emancipation is the legal mechanism by which a minor who is relatively incapable becomes capable of performing civil acts that, in theory, would only be permitted upon reaching the age of 18. In its literal sense, it is the act of becoming free or independent[4].

This situation arises particularly when the individual in need of transplantation is a close family member. Fortunately, in clinical practice, cases in which parents seek to emancipate their adolescent children with the specific intention of enabling them to become donors for a relative (such as a sibling or nephew) are infrequent. However, it is not uncommon for the parents of a child or infant requiring transplantation to be legally incapable and present themselves as potential donors. Anyway, each transplant team retains autonomy to determine the minimum age required to accept a candidate for living organ donation, provided the individual is either at least 18 years old or legally emancipated.

It is important to note that psychological and emotional maturity does not automatically develop upon reaching the age of legal majority at 18, nor through "voluntary emancipation." Research indicates that the brain only reaches full maturity around the age of 25; however, this does not necessarily imply that an individual becomes emotionally mature at that age, as other factors, such as genetics, environment, and early life experiences, also shape one's capacity for maturity[5]. Moreover, it is essential to consider that factors such as environment, life experiences, and family support exert a significant influence on the decision-making process involved in becoming a potential donor.[5,6] Therefore, emancipating a minor to enable living organ donation may not constitute a genuine assurance of decisional autonomy, given that civil emancipation of an adolescent does not equate to emotional maturity.

The decision to donate organs while alive must take into account all associated risks, whether physical, emotional, and/or social. For adolescents, these risks are compounded by the inherent vulnerabilities of this developmental stage: youthful idealism, heightened impulsivity, a sense of invincibility, and increased susceptibility to moral, psychological, and physical coercion, particularly within the family context, where the desire to save a loved one may override their own genuine will[7,8]. The boundary between autonomous choice and emotional pressure is exceedingly subtle. There is a risk that the adolescent may express willingness to donate solely out of fear of judgment, concerned that others may perceive them as unwilling to help save a life, and, as a result, fear losing affection or experiencing other secondary losses and gains.

It can be particularly challenging for healthcare professionals to discern the genuine intent of a young individual regarding their decision to donate, especially when a dependent relationship exists with the recipient. It may also be difficult to rule out psychological and financial pressures exerted by the parents[5]. Parents who encourage their child to donate to a family member may face a conflict of interest in relation to both the recipient (particularly if the recipient is another child) and the donor. It is not uncommon for parents to prioritize the health of the individual in need of the transplant[5].

Many favorable arguments are based on presumed psychological benefits for potential young donors, such as increased self-esteem (resulting from a courageous act) and the strengthening of emotional bonds with the recipient[8]. However, such benefits are subjective, uncertain, and difficult to measure. The risk that beneficence toward the recipient may result in harm to the donor must never be disregarded[9].

In the international context, there is no consensus regarding the minimum age to become a donor. Some European countries consider that, starting at the age of 12, it is already possible, provided that there are no "serious consequences" for the child[10]. But what would these "serious consequences" entail? In other countries, the minimum age is set at 14 or 16 years, and parental or judicial authorization is not even required[10]. In many countries, organ donation by minors is not permitted under any circumstances, even with parental authorization[10].

What can be observed is a growing concern with protecting children and adolescents from irreversible interventions that may cause more suffering than benefit[11]. The most important principle, with global consensus, is that minors may serve as living organ donors only under exceptional circumstances, when all other options have been exhausted, with ethical considerations in place and specific, rigorous protection criteria fully met[8,10,11].

Therefore, when faced with a minor donor candidate who is already emancipated (or about to be), and considering the broader context discussed above, the psychologist assigned to the donor care team (a professional who must operate independently from the team responsible for the recipient) should conduct a highly thorough psychological assessment. This evaluation must examine the entire family dynamic, potential emotional pressures, the adolescent's cognitive development level, their capacity to provide informed consent, and the authenticity of their will to donate[7]. The use of open interviews (which foster rapport—the development of a bond of trust and empathy), combined with assessment tools such as projective tests and intelligence and cognitive evaluations, is highly recommended. The protection of the minor's mental health and genuine autonomy must prevail over any external interests, no matter how noble they may be[7]; after all, it is a life still in the making.

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CONCLUSION

The civil emancipation of an adolescent does not guarantee emotional maturity. The decision to donate organs while alive requires full autonomy, complete understanding of the risks, and the absence of any form of coercion, conditions that are rarely met by adolescents. It is the responsibility of healthcare professionals to revisit ethical concepts and conduct a thorough assessment of the psychological, emotional, and social aspects of the prospective donor. It is considered preferable that this evaluation be carried out before emancipation takes place.

Ideally, every effort should be made to identify an alternative donor, that is, to exhaust all possibilities of finding another candidate, in order to preserve the physical, psychological, and emotional integrity of the minor adolescent who is still undergoing developmental processes.

CONFLICT OF INTEREST

Nothing to declare.

DATA AVAILABILITY STATEMENT

Not applicable

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