

Unvaccinated Patients Denied Care

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Strict pandemic policies are putting health care providers in a position where they might be able to deny care for individuals who have chosen not to get one of the COVID-19 vaccines.

In October, the UCHealth health care system in Colorado denied a kidney transplant to an unvaccinated woman. Leilani Lutali, 56, was undergoing stage 5 renal failure and was in line to receive the transplant from donor Jaimee Fougner within months. Neither Lutali nor Fougner had received shots. A transplant or dialysis is usually necessary for survival for a patient with stage 5 renal failure.

UCHealth sent Lutali a letter informing her she “will be inactivated on the list for non-compliance by not receiving the COVID vaccine.” UCHealth gave her 30 days to begin the vaccination series, telling her that if she refused, she would be removed from the kidney transplant waiting list.

Fougner told CBS Denver in October that Lutali’s “choice has been taken from her” and that “her life has now been held hostage because of this mandate.”

Fougner declined the vaccine for religious reasons, while Lutali chose not to take it for medical reasons. Lutali said she checked in August and confirmed there was no mandate in place. She said she was unaware until late September that donor and recipient were required to receive a vaccine to move forward with the operation.

UCHealth released the following statement about the case: “For transplant patients who contract COVID-19, the mortality rate ranges from about 20% to more than 30%. This shows the extreme risk that COVID-19 poses to transplant recipients after their surgeries.”

Lutali and Fougner were unable to locate a Colorado hospital willing to perform their transplant, so the women sought hospitals out of state.

Doctors Saying No to Care

Other hospitals around the U.S. have considered barring or triaging unvaccinated patients. University of Washington Medicine requires all solid organ transplant candidates to have been fully vaccinated against “current on all critical vaccinations,” including Covid-19, saying that a recipient’s immune system is more likely to respond well before the procedure.

In August, a memo sent to members of the North Texas Mass Critical Care Guideline Task Force, which told physicians they could consider vaccination status when deciding who to care for, was leaked to *The Dallas Morning News*.

The memo reasoned that vaccinated patients are more likely to survive bouts of Covid-19 than unvaccinated patients, so in cases of extreme strain on hospital resources, doctors would be justified in prioritizing the vaccinated.

“Many are understandably angry and frustrated with the unvaccinated, but triage must remain grounded upon likelihood of survival. Health care professionals should continue to honor duties of care and compassion,” stated one of the bullet points in the memo.

After the leak, task force spokesman Dr. Mark Casanova downplayed the importance of the memo and said vaccination status should have no bearing on whether hospitals care for patients.

In Alabama, a doctor wrote a letter to his patients announcing that he would no longer see unvaccinated patients after October 1. The doctor, Jason Valentine, told *The Birmingham News*, “If they asked why, I told them COVID is a miserable way to die, and I can’t watch them die like that.”

A Florida doctor announced that any unvaccinated patients would be denied in-person care and limited to virtual appointments because the Pfizer vaccine was approved for general use by the U.S. Food and Drug Administration.

Unvaccinated patients may receive better care, in at least one way, in Tennessee. In September, state health officials recommended limiting, with exceptions, monoclonal antibody treatments to unvaccinated patients with bad cases of Covid-19. The in-demand treatment lessens the severity of Covid-19 symptoms.

The Tennessee recommendation was based on guidance from the National Institutes of Health.

Denial of Care Backup

Physicians and hospital systems may have cover from at least one source.

The American Hospital Association, a national health care industry trade group, released a statement addressing the possibility of doctors refusing care to unvaccinated patients:

“During an emergency situation or if the patient is in labor, the Emergency Medical Treatment and Labor Act (EMTALA) requires hospitals to stabilize and initiate treatment. If a patient is in need of non-emergency surgery, or other care that might leave the patient with a weakened

immune system or the inability to mount a strong response to the vaccination, doctors may want to delay services long enough for the patient to get vaccinated so that they are as safe as possible.”

On the other hand, the ethical code of the American Medical Association (AMA) states that “a physician should not refuse a patient simply because the individual is not vaccinated or declines to be vaccinated.”

Marilyn Singleton, M.D., J.D., a board-certified anesthesiologist and past president of the Association for American Physicians and Surgeons, believes the AMA does provide “wiggle room” to deny care to protect others.

“But when all is said and done, physicians must remember the oath of Hippocrates – that standard of medical ethics,” said Singleton. “All of a physician’s actions must be for the “benefit of the sick” or to do no harm. We have already seen [denial] of so-called elective procedures and physician office visits do harm to patients. Oncologists report that cancer screenings for breast, colon, and prostate cancer sharply declined as much as 90 percent during the first year of the pandemic.

Are Transplants an Exception?

A Southern California woman’s kidney transplant was delayed earlier this year because of rising Covid-19 cases. Her hospital, Scripps Health, considered living organ donations “non-emergent” and was limiting transplants to patients who need them immediately.

The U.S. Department of Health and Human Services allows hospitals to treat organ transplants as non-elective, but hospitals have made their own choices and risk assessments with regard to performing transplants.

There may be a rationale for refusing to perform organ transplants to the unvaccinated, says Jeffrey Singer, M.D., a surgeon, and senior fellow at the Cato Institute.

“It is not without medical precedent. Because we don’t have a market system for organ transplants, we end up with shortages of organs and centrally planned rationing,” said Singer. “People who need liver transplants, for instance, are denied them if they continue to drink alcohol or use IV drugs, particularly if their cirrhosis is due to hepatitis C from IV drug use or due to alcoholism.

“So, one can certainly make a case for denying transplants to people who are going to be on immunosuppressants for life and are refusing to immunize themselves against a virus that has a 20 percent fatality rate for them. The solution is to allow people to sell their organs in the marketplace and work out their own terms with consumers.

Saying no to the unvaccinated on other procedures is a different argument, says Singer. “I cannot professionally condone a health care practitioner denying care to patients who won’t get vaccinated—just like I can’t condone refusing medical care to people doing harm to themselves

by making other unhealthy lifestyle choices, such as tobacco smoking, drinking too much alcohol, eating the wrong foods,” said Singer.