

## SEXUAL CONSENT AND COGNITIVE IMPAIRMENT

### CLINICAL CASE

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Belén is an 83-year-old woman admitted to the internal medicine ward for a urinary tract infection with secondary acute confusional state. She is married, has two daughters, and has strong family support. Most of the time she is accompanied by a family member; she is only left alone at night, as her husband leaves after she has fallen asleep. Belén has been diagnosed with moderate cognitive impairment.

Juanjo is another patient on the same ward. He is an 85-year-old widower with one son, a nurse at another hospital, who is closely involved with his care. Juanjo resides in a long-term care facility in the dependent patients unit due to Lewy body dementia with behavioral disturbances. He was admitted for heart failure, which is now stabilized, and discharge is planned within 48–72 hours. On the night in question, he was alone.

At around 2 a.m., noise is heard from Belén's room at the nursing station. A nurse goes to investigate and finds Juanjo and Belén engaged in sexual activity. The nurse separates the two patients and escorts Juanjo back to his room. She notifies the on-call internist, Dr. Almansa, who evaluates both patients and notes that they appear calm. When speaking with Belén about the incident, she asks, "Why did they take my boyfriend away? Where is he now?" Dr. Almansa continues to ask if she feels well or has any discomfort, and she repeatedly states that she feels fine and does not know where her boyfriend has been taken. After the assessment, both patients fall asleep and remain calm.

Dr. Almansa is left questioning whether he should treat the case as a possible sexual assault, given that he cannot be certain the encounter was consensual. He wonders whether he would have been alerted if the individuals involved were, for instance, a married couple. He also considers whether the families should be informed of what happened.

### ETHICAL ANALYSIS OF THE CASE

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We are dealing with a sexual encounter between two patients whose capacity to give consent is compromised due to cognitive impairment. The ethical values in conflict for Dr. Almansa are, on one hand, the patients' right to privacy and sexual autonomy, and on the other, the need to ensure safety and protect vulnerability. Patients with cognitive impairment are particularly vulnerable due to their dependence, fragility, and intellectual disability. The healthcare team's objective must be to promote their well-being, taking their vulnerability into account throughout the decision-making process. This case involves two patients, and any action taken should aim to protect and care for both.

If the physician believes that Juanjo has abused Belén, he must handle the situation as a case of sexual assault, as this would constitute a criminal offense. Reporting the incident to the on-call legal counsel would serve to protect Belén's safety and vulnerability. However, he is not convinced that this was an assault, as he considers that despite Belén's dementia—the interaction appeared consensual on both sides. If he chooses not to report the incident, he would be preserving the

privacy and sexual freedom of both patients. Patients with intellectual disabilities, even if not fully autonomous, still retain a degree of freedom in making personal decisions.

Another question that arises is whether the families should be informed. Is it appropriate to tell them what happened, or is it better to protect the confidentiality of Belén and Juanjo?

### **POSSIBLE COURSES OF ACTION**

Since both patients are calm, no further action is necessary. There is no need to inform the families, as sexual relationships are private and intimate matters.

Reassess both patients the following morning, both psychological and physical evaluations. Additionally, assess their capacity specifically in relation to engaging in sexual activity.

Notify Belén's husband and Juanjo's son first thing in the morning, ask them to come to the hospital, and inform them of what happened.

Contact the long-term care facility to gather background information on Juanjo and inform the institution of the events that took place.

If there is any suspicion of sexual assault, perform a physical examination of Belén to determine whether there are injuries and to what extent. Request a consultation with the gynecology department to assist in decision-making.

Transfer Juanjo to a different area of the hospital until he is discharged. In the meantime, maintain supervision of both patients to prevent further sexual encounters.

Speak with Belén and Juanjo to explain that the hospital is not an appropriate setting for intimate relationships.

Immediately notify the on-call legal counsel to activate the sexual assault protocol.

Inform Belén's husband that he should file a report if he deems it necessary.

Let the hospital's security team know the situation so they can monitor the patients and ensure neither of them leaves their room until their families arrive.

### **RECOMMENDED COURSE OF ACTION**

Given that both patients have cognitive impairment and dementia, albeit at different levels, and that Belén has also been in a confusional state, their capacity to engage in sexual activity must be assessed. If they are deemed not competent to consent (which is likely), their respective family members, as legal representatives of Belén and Juanjo, must be notified.

In any case, patients with disabilities must be informed and involved, to the extent possible, in decisions that affect them. Therefore, it is necessary to speak with both Belén and Juanjo. They should be told that the hospital is not an appropriate place for intimate relationships.

If Belén is found not to have the capacity to consent to sexual activity under current conditions, the situation must be managed as a potential crime against sexual freedom. If that is the case, the following steps must be taken:

- o Request a consultation with the gynecology department;
- o Notify the on-call legal counsel
- o Activate the institution's sexual assault protocol. The examination will be performed in coordination with the forensic physician and the gynecology team. Throughout the process, the procedures should be explained to Belén in the clearest and most accessible language possible. Her informed consent must be obtained for the

gynecological examination. If she refuses to allow sample collection, she must not be forced to undergo it.

Belén's husband may choose whether or not to file a formal complaint; however, if Belén is not competent to consent to sexual activity, the clinical and forensic response must proceed independently of her husband's decision to press charges.

It would be prudent to transfer Juanjo to another area of the hospital to prevent further contact with Belén. Until that transfer is arranged, both patients should be closely monitored and supervised to ensure that no further sexual encounters occur.

## **DISCUSSION**

Sexuality in individuals with cognitive impairment is a topic that remains under-researched and, according to some, continues to be a social taboo. It is important to recognize that many people with intellectual disabilities whether due to dementia or other conditions such as Down syndrome may have an active sexual life. In such cases, the central issue is determining whether they are free and competent to engage in sexual activity.

There is no universal "formula" for managing these situations; each case must be assessed individually. If there is any suspicion that one of the individuals involved is participating against their will, or if there are doubts about their capacity and, by extension, their autonomy, appropriate measures must be taken. These include preventing abuse and non-consensual encounters, and, when necessary, reporting a potential assault. However, it is also possible for individuals with cognitive impairment to give consent and derive enjoyment from sexual activity, as documented in studies involving people with both congenital and acquired intellectual disabilities, including cases like the one presented here.

Neither healthcare professionals nor the hospital as an institution should impose moral judgments on patients. Their role must be to safeguard patient privacy and autonomy, prevent and respond to any possible abuse, and, ultimately, ensure the well-being of those under their care.

**Sgd:** Bioethics and Health Law Committee of ASISA-Lavinia  
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