Maternal Refusal of Care

Overview

1. Practical Considerations
2. Ethical Considerations
3. Legal Considerations
4. The ACOG Committee Opinion, June 2016
5. Risk Management Considerations

Maternal Refusal

Practical Considerations

The Source of Conflict:

- Maternal Rights Versus Fetal Rights
- One Patient or Two?
- Fetal Rights: Fetus as a Separate Patient
- More Ability to Image, Test and Treat the Fetus in Utero
- State Statutes that Penalize Pregnant Mothers Who Abuse Drugs, Alcohol, etc.
- Roe v. Wade
- Any Fetal Intervention has Consequences for the Mother

Factors Influencing Maternal Refusal

- Language Barriers
- Cultural Differences
- Religion
- Poor Communication Between Patient and Providers
- Cost of C-sections and Other Therapy
- Pain of C-sections
- Fear

Religious and Cultural Factors

- C-sections Perceived in Some Arab Cultures as Mutilation
- Hmong Women May Refuse for Cultural Reason/Desire for Vaginal Delivery
Maternal Refusal

Practical Considerations

Examples of Maternal Refusal

- Bed Rest
- Amniocentesis
- Intrauterine Transfusions
- C-sections: Placenta Previa, Cephalo-Pelvic Disproportion, Fetal Distress

Clinical Risk Factors: C-sections

- Postop Infections
- Hemorrhage
- Chronic Pelvic Pain
- Bowel Obstruction
- Ability to Conceive Again
- Surgical Complications/Injuries
- Emotional Impact of a Forced Procedure
- Death

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Ethical Considerations
Biomedical Ethics: Autonomy

- Focus: Decision-making in Health Care
- Personal Rule of the Self
  - Free From Controlling Interference
  - Free From Personal Limitations That Prevent Meaningful Choice
- Two Essential Conditions to Autonomy:
  - Liberty
  - Agency

Interpreting Respect for Autonomy

- The Basic Paradigm
- Express Consent
- Informed Consent
- The Concept of Competence
- Caregiver's Duty to Disclose Information
- Caregiver's Obligation to Abstain From Controlling Influence
Biomedical Ethics: Nonmaleficence

- First: Do No Harm
- Obligations to Not Harm Others are More Stringent than Those to Help Others
- Not Putting Others at Risk

Biomedical Ethics: Beneficence

- Taking Positive Steps to Help Others
- Balancing Benefits Versus Risks and Costs
- Utility: Balancing Benefits Versus Burdens

Biomedical Ethics: Justice

- Justice:
  - Fairness
  - Desert (What is Deserved)
  - Entitlement
- One Who Has a Valid Claim Based in Justice Has a Right
Maternal Refusal
Legal Considerations

- Constitutional Rights (14th Amendment)
  - Right to Bodily Integrity
    - Self-Determination
  - Privacy
- Informed Consent
  - Informed Refusal
- Roe v. Wade: A viable fetus merits state protection
- Fetal Rights Recognition Creates Conflict with Maternal Rights to Refuse Care
- 38 states Recognize the Fetus as a Legal Victim with Rights: Unborn Victims of Violence Legislation

Roe v. Wade is a Factor

- A fetus is not to be classed as a person under the 14th Amendment
- The right of privacy protects a woman's right to abortion in the 1st trimester
- After the first trimester, the state may regulate abortion
- When the fetus becomes viable, the state has "...an important and legitimate interest in protecting the potentiality of human life..."
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Legal Considerations

- Case Law is Sparse
  - Some Recognize Fetal Rights (Roe v. Wade) Outweighing a Mother's Right to Refuse
  - But Others Say Mother's Decision Controls
- Malatesta Case: Alabama, August 2016
  - $16M Jury Verdict
  - Hospital Failed to Comply With Mother's Wish for “Natural Birth”
  - Parents Claimed Hospital Misled them on Types of Natural Birthing Available and did not Honor the Birth Plan

Maternal Refusal of Care

ACOG Committee Opinion Number 664 June 2016
Refusal of Medically Recommended Treatment During Pregnancy

Recommendations (A Sampling)

- But "...not intended to dictate an exclusive course of action in all cases."
- "The purpose of this document is to provide [OB/Gyns] with an ethical approach to addressing a pregnant woman’s decision to refuse recommended medical treatment that recognizes the centrality of the pregnant woman’s decisional authority and the interconnection between the pregnant woman and the fetus."
Maternal Refusal

AGOC Committee Opinion Number 664

Recommendations

- “Pregnancy is not an exception to the principle that a decisionally capable patient has the right to refuse treatment... therefore (it) should be respected.”
- “The use of coercion is not only ethically impermissible but also medically inadvisable because of the realities of prognostic uncertainty and medical knowledge.”
- “(OBs) are discouraged in the strongest possible terms from the use of duress, manipulation, coercion, physical force or threats, including threats to involve the courts or child protective services...”

Maternal Refusal

AGOC Committee Opinion Number 664

Recommendations

- “(OBs) are encouraged to resolve differences by using a team approach that recognizes the patient in the context of her life and beliefs...”
- “…consider seeking advice from ethics consultants...”
- “The College opposes the use of coerced medical intervention...”
- “The College strongly discourages medical institutions from pursuing court-ordered interventions...”
- “Resources and counseling should be made available to patients... (and for health care professionals) after adverse outcomes...”

Maternal Refusal

AGOC Committee Opinion Number 664

Recommendations

- “When working to reach a resolution with a patient who has refused medically indicated treatment, consideration should be given to the following factors: the reliability and validity of the evidence base, the severity of the prospective outcome, the degree or burden of risk placed on the patient, the extent to which the pregnant woman understands the potential gravity of the situation or the risk involved, and the degree of urgency that the case presents.
- “Ultimately, the patient should be reassured that her wishes will be respected when treatment recommendations are refused.”
Complexities of Refusal

- “In most desired pregnancies the interests of the mother and the fetus converge.”
- “(But) a pregnant woman and her (OB) may disagree about which clinical decisions and treatment are in her best interest and that of her fetus…”
- “…and therefore may refuse recommended therapies and treatments.”
- “…the physician should carefully document the refusal in the medical record…”

Arguments Against Court-Ordered Interventions

- Prognostic Uncertainty
- Barriers to Needed Care
  - Coercive Policies May Discourage Future Prenatal Care
  - So Can Criminalization of Maternal Actions
- Discrimination: Most Court-ordered Interventions Involve Women of Color and Low Socioeconomic Status
Maternal Refusal

AGOC Committee Opinion Number 664

Process for Addressing Refusal of Medically Indicated Treatment During Pregnancy

- Seek to Understand the Patient's Perspective
  - "Eliciting the patient's reasoning, lived experience and values is critically important..."

- Enhance the Patient's Understanding
  - Adequate and Accurate Information Provided by Caregivers
  - Acknowledging that the Patient is free at any Time to Refuse Treatment
  - Discussion of Benefits and Risks
  - Use of Lay Language
  - Translation as Needed
  - "...open, nonjudgmental and continued dialogue between physician and patient..."

- Determine the Patient's Decision-Making Capacity
  - Patient's are Presumed to be Competent
  - Disagreement is not evidence of lack of capacity, per se
  - Psych Consults may be Indicated but Cannot be Coercive
  - "...the pregnant woman's assessment of the collective interests of herself, her fetus, her family, or her community, and religious beliefs and cultural meanings of interventions may all lead decisionally capable patients to choose options other than those strongly recommended..."

- Emergency Cases: Problems
  - Potential Lack of Ability/Time to Fully Inform the Patient
  - Patient May be Unable to Consent
  - Concept of "Presumptive Consent" Applied when Patient's Wishes not Known
  - Expressions of Disagreement or Unwillingness Would Negate Presumptive Consent

- Evaluate Maternal and Fetal Risk
  - "...the benefits of the procedure to the pregnant woman and fetus..."
  - "...the probability of harm to the pregnant woman and fetus from either performing or withholding the procedure..."
  - "...the risk and benefits of less intrusive treatments, when available..."

- Interdisciplinary Team Approach
Maternal Refusal

**AGOC Committee Opinion Number 664**

**Conclusion**

"Pregnancy does not lessen or limit the requirement to obtain informed consent or to honor a pregnant woman's refusal of recommended treatment."

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**Maternal Refusal of Care**

**Risk Management Considerations**

- Anticipation and Preparation for Maternal Refusal Events
- Multi-Disciplinary Team Assembled for Discussion: "What If? Scenarios"
  - Ethics Committee with Other Reps: Risk Mgt, Inhouse and Outside Counsel, etc.
  - Or Multi-disciplinary Team with Ethics Committee reps
- Awareness of the Role of Language, Religion, and Cultural Barriers to Communication and Care Decisions
  - Availability and Use of Interpreters
  - Community and Religious Contacts as Facilitators, Chaplains
Maternal Refusal

Risk Management Considerations

- Create Birthing Plans Prior to Labor: No Surprises
- OB Explains that there may be Alterations to Birthing Plans
- OB and Staff Take the Time to Educate the Patient
- ACOG Committee Opinion #664 as a Guideline
- Persuasion, not Coercion
- A Court Order is a Last Resort and May Not be Available/Timely
- Above All, Strive to Understand the Patient's Perspective and Rationale

Questions

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