

# Maternal Refusal of Care\*

Overview

Practical Considerations

Ethical Considerations

Legal Considerations

The ACOG Committee Opinion, June 2016

Risk Management Considerations

ObGyn.net: Blog. Paul Burcher, MD PhD. "Refusal of C-Section: Where Does Your Moral Compass Lead You? "June 26, 2014. http://www.obgyn.net/pregnancy-and-birt/refusal-c-sertion.where-ches



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Maternal Refusal	
<b>▼ Practical Considerations</b>	
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	
<ul> <li>State Statutes that Penalize Pregnant Mothers Who Abuse Drugs, Alcohol, etc.</li> </ul>	
□ Roe v. Wade	
□ Any Fetal Intervention has Consequences for the Mother	
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Maternal Refusal	
▼ Practical Considerations	
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Factors Influencing Maternal Refusal	
□ Language Barriers	
☐ Cultural Differences	•
☐ Religion	
<ul> <li>Poor Communication Between Patient and Providers</li> </ul>	
☐ Cost of C-sections and Other Therapy	
☐ Pain of C-sections	
☐ Fear	
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Maternal Refusal	
<b>♥</b> Practical Considerations	
Religious and Cultural Factors	
□ C-sections Perceived in Some Arab	
Cultures as Mutilation	
<ul> <li>Hmong Women May Refuse for Cultural Reason/Desire for Vaginal Delivery</li> </ul>	
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# **\*\*Practical Considerations**



# **Examples of Maternal Refusal**

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

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#### **Maternal Refusal**

# \* Practical Considerations



# **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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Maternal Refusal  ** Ethical Considerations		_		
Biomedical Ethics: The 4 Principles		-		
Respect for Autonomy	Justice	-		
	Beneficence	-		
Nonmaleficence	Delicite	_		
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Maternal Refusal				
* Ethical Considerations		-		
Biomedical Ethics: Autonomy  Focus: Decision-making in Health Ca Personal Rule of the Self Free From Controlling Interference Free From Personal Limitations 1	are ce	-		
Meaningful Choice  Two Essential Conditions to Autono  Liberty  Agency	ny:	-		
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Maternal Refusal				
** Ethical Considerations		-		
Biomedical Ethics: Autonomy		-		
Interpreting Respect for Autonomy  The Basic Paradigm  Express Consent		-		
<ul><li>☐ Informed Consent</li><li>☐ The Concept of Competence</li></ul>		-		
<ul> <li>□ Caregiver's Duty to Disclose Inform</li> <li>□ Caregiver's Obligation to Abstain Figure 1</li> </ul>		-		
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Maternal Refusal	
** Ethical Considerations	
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	
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Maternal Refusal	
* Ethical Considerations	
Biomedical Ethics: Beneficence	
□ Taking Positive Steps to Help Others	
<ul><li>Balancing Benefits Versus Risks and Costs</li><li>Utility: Balancing Benefits Versus Burdens</li></ul>	-
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Maternal Refusal	
**Ethical Considerations	
Biomedical Ethics: Justice	
☐ Justice: ☐ Fairness	
Desert (What is Deserved) Entitlement	
☐ One Who Has a Valid Claim Based in Justice Has a Right	
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# TLegal Considerations

- ☐ Constitutional Rights (14<sup>th</sup> Amendment)
  - ☐ Right to Bodily Integrity
    - □ Self-Determination
    - □ Privacy
- □ Informed Consent
  - □ Informed Refusal
- $\hfill \square$  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

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# **Maternal Refusal**

# \*\* Legal Considerations

Roe v. Wade is a Factor

- □ A fetus is not to be classed as a person under the 14<sup>th</sup> Amendment
- □ The right of privacy protects a woman's right to abortion in the 1<sup>st</sup> trimester
- $\hfill \Box$  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

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# Maternal Refusal

# **\*\* AGOC Committee Opinion Number 664**

#### 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."

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Maternal Refusal		
<b>▼ AGOC Committee Opinion Number 664</b>	_	
Recommendations		
"Pregnancy is not an exception to the principle that a decisionally capable patient has the right to refuse treatmenttherefore (it) should be respected."	-	
"The use of coercion is not only ethically impermissibl also medically inadvisable because of the realities of prognostic uncertainty and medical knowledge."	e but	
"(OBs) are discouraged in the strongest possible terms from the use of duress, manipulation, coercion, physic force or threats, including threats to involve the courts child protective services"	al	
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	-	
Maternal Refusal		
<b>▼ AGOC Committee Opinion Number 664</b>	_	
Recommendations		
"(OBs) are encouraged to resolve differences by using team approach that recognizes the patient in the conte her life and beliefs"		
□ "consider seeking advice from ethics consultants	<b>-</b>	
"The College opposes the use of coerced medical intervention"	-	
□ "The College strongly discourages medical institutions pursuing court-ordered interventions"	s from	
"Resources and counseling should be made available patients(and for health care professionals) after adve outcomes"		
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	-	
Maternal Refusal		
<b>▼ AGOC Committee Opinion Number 664</b>	-	
Recommendations		
☐ "When working to reach a resolution with a patient w		
has refused medically indicated treatment, considera should be given to the following factors: the reliability validity of the evidence base, the severity of the		
prospective outcome, the degree or burden of risk pla on the patient, the extent to which the pregnant wom	an	
understands the potential gravity of the situation or the risk involved, and the degree of urgency that the case presents.		
<ul> <li>'Ultimately, the patient should be reassured that her</li> </ul>	-	
wishes will be respected when treatment recommendations are refused."	_	
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Maternal Refusal	
<b>▼ AGOC Committee Opinion Number 664</b>	
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"	
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Maternal Refusal  ** AGOC Committee Opinion Number 664	
The second minimum of	
Complexities of Refusal	
☐ "When the pregnant woman and fetus are conceptualized as	
separate patients, the pregnant woman and her medical	
interestscan become secondary to that of the fetus	
"The obstetrician's primary duty is to the pregnant woman."	
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Maternal Refusal	
▼ AGOC Committee Opinion Number 664	
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	
	-
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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"	
<ul> <li>□ Enhance the Patient's Understanding</li> <li>□ Adequate and Accurate Information Provided by Caregivers</li> </ul>	
<ul> <li>Acknowledging that the Patient is free at any Time to Refuse Treatment</li> <li>Discussion of Benefits and Risks</li> </ul>	
<ul><li>☐ Use of Lay Language</li><li>☐ Translation as Needed</li></ul>	
"open, nonjudgmental and continued dialogue between physician and patient"	
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Maternal Refusal	
<b>▼ AGOC Committee Opinion Number 664</b>	
Process for Addressing Refusal of Medically Indicated	
Treatment During Pregnancy  ☐ Determine the Patient's Decision-Making Capacity	
□ Patient's are Presumed to be Competent	
<ul> <li>□ Disagreement is not evidence of lack of capacity, per se</li> <li>□ Psych Consults may be Indicated but Cannot be Coercive</li> </ul>	
"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 to	
choose options other than those strongly recommended'	
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Maternal Refusal	
* AGOC Committee Opinion Number 664	
Process for Addressing Refusal of Medically Indicated	
Treatment During Pregnancy ☐ 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	
<ul> <li>"the benefits of the procedure to the pregnant woman and fetus"</li> <li>the probability of harm to the pregnant woman and fetus from either</li> </ul>	
performing or withholding the procedure…"  — "…the risk and benefits of less intrusive treatments, when available."	
□ Interdisciplinary Team Approach	
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### **\*\* 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

# 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

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#### Risk Management Considerations

- ☐ Create Birthing Plans Prior to Labor: No Surprises
- $\hfill \square$  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

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