



The Right To Refuse: Key Legal and Ethical Principles

The right to possession and control of one's own body is a core principle of liberty:

“No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.”

-Union Pac. Ry. Co. v. Botsford, 141 U.S. 250, 251(1891)

The right to refuse medical procedures is well established in the law:

“Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages.”

-Schloendorff v. Society of New York Hosp., 105 N.E. 92 (N.Y. 1914)

“For our law to compel the Defendant to submit to an intrusion of his body would change every concept and principle upon which our society is founded. To do so would defeat the sanctity of the individual and would impose a rule which would know no limits and one could not imagine where the line would be drawn.”

- McFall v. Shimp, 10 Pa. D. & C.3d 90 (Pa. Com. Pl., July 26, 1978)

“A competent person has a liberty interest under the Due Process Clause in refusing unwanted medical treatment.”

-Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990)

"In virtually all cases the question of what is to be done is to be decided by the patient – the pregnant woman – on behalf of herself and the fetus." Exceptions, if any, to that rule will be "...extremely rare and truly exceptional. . . . Indeed, some may doubt that there could ever be a situation extraordinary or compelling enough to justify a massive

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intrusion into a person's body, such as a caesarean section, against that person's will." The fact that a fetus is presumed to be viable or that the pregnant [patient] is believed to be terminally ill does not provide a basis for stripping a pregnant woman of her constitutional and human rights. Neither the viability of the fetus nor the condition of the pregnant person justifies the removal of a person's constitutional and human rights.

-In re A.C., 573 A.2d 1235, 1237(1990)

"[A] woman's right to refuse invasive medical treatment, derived from her rights to privacy, bodily integrity, and religious liberty, is not diminished during pregnancy. The woman retains the same right to refuse invasive treatment, even of lifesaving or other beneficial nature, that she can exercise when she is not pregnant. The potential impact upon the fetus is not legally relevant... to the contrary, the Stallman court explicitly rejected the view that the woman's rights can be subordinated to fetal rights."

- In re Baby Boy Doe, 260 Ill.App.3d 392, 401 (1994)

"A woman's competent choice to refuse medical treatment as invasive as a cesarean section during pregnancy must be honored, even in circumstances where the choice may be harmful to her fetus."

- In re Baby Boy Doe, 260 Ill.App.3d 392, 401 (1994)

"[T]he State may not override a pregnant woman's competent treatment decision, including refusal of recommended invasive medical procedures, to potentially save the life of the viable fetus." And concluding that this prohibition on State power also applies to blood transfusions, "a blood transfusion is an invasive medical procedure that interrupts a competent adult's bodily integrity." Further, holding that it was wrong to appoint a lawyer for the fetus.

- *In re Fetus Brown*, 689 N.E.2d 397 (Ill. App. 1997).

All Patients Including Pregnant Women at all Stages of Pregnancy Have a Right to Privacy

All patients including pregnant women have a reasonable expectation of privacy in their medical information. All people, including pregnant women are protected by the Fourth Amendment's prohibition on non-consensual and warrantless searches – even when done in the guise of medical testing.

-Ferguson v. City of Charleston, 532 U.S. 67 (2001)

Ethical and regulatory standards require health care providers to honor the decision-making of people and pregnant people are no exception:

"...lack of informed consent constitutes a human rights violation that could be attributed to States and national health systems... When practiced without a woman's consent, caesarian sections may amount to gender-based violence against women and even torture."

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- United Nations Report, A Human Rights Based Approach to Mistreatment and Violence Against Women in Reproductive Health Services With a Focus on Childbirth and Obstetric Violence, July 2019

"Pregnancy is not an exception to the principle that a decisionally capable patient has the right to refuse treatment, even treatment needed to maintain life. Therefore, a decisionally capable pregnant woman's decision to refuse recommended medical or surgical interventions should be respected...Obstetrician-gynecologists 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, to motivate women toward a specific clinical decision...The College opposes the use of coerced medical interventions for pregnant women, including the use of the courts to mandate medical interventions for unwilling patients."

-American College of Obstetricians and Gynecologists, Committee Opinion Number 664, June 2016.

"Judicial intervention is inappropriate when a woman has made an informed refusal of a medical treatment designed to benefit her fetus. If an exceptional circumstance could be found in which a medical treatment poses an insignificant or no health risk to the woman, entails a minimal invasion of her bodily integrity, and would clearly prevent substantial and irreversible harm to her fetus, it might be appropriate for a physician to seek judicial intervention. However, the fundamental principle against compelled medical procedures should control in all cases which do not present such exceptional circumstances. The physician's duty is to provide appropriate information, such that the pregnant woman may make an informed and thoughtful decision, not to dictate the woman's decision."

-American Medical Association, Policy Statement - H-420.969, Legal Interventions During Pregnancy (2016).

"A hospital must protect and promote each patient's rights...The patient's rights include being informed of his or her health status, being involved in care planning and treatment, and being able to request or refuse treatment...The patient has the right to be free from all forms of abuse or harassment...All patients have the right to be free from physical or mental abuse, and corporal punishment. All patients have the right to be free from restraint or seclusion, of any form, imposed as a means of coercion, discipline, convenience, or retaliation by staff."

-42 CFR 482.13, Medicare and Medicaid Programs; Hospital Conditions of Participation: Patients' Rights; Final Rule (2012).

"Recognizing and respecting patient rights directly impact the provision of care. Care, treatment, or services should be provided in a way that respects and fosters the patient's dignity, autonomy, positive self-regard, civil rights, and involvement in his or her care."

-Joint Commission Standards, Rights and Responsibilities of the Individual, Overview (2009).

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