



National Advocates
for Pregnant Women

N A P W

COERCIVE MEDICINE

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An arrest in Utah last week of a 28-year-old woman who allegedly committed murder by refusing to undergo a C-section represents a shocking abuse of state authority and a dangerous disregard for medical ethics.

In this case prosecutors claim that Melissa Rowland—a woman pregnant with twins—rejected the advice of her physicians to have a caesarean section, allegedly resulting in the stillbirth of one of the twins. According to the law, however, pregnant women—like other Americans—have the right to decide whether or not to undergo surgery. The American Medical Association and the American College of Obstetricians and Gynecologists (ACOG) as well as other leading medical groups similarly conclude that the final decision must be the woman's:

"Once a patient has been informed of the material risks and benefits involved with a treatment, test or procedure, that patient has the right to exercise full autonomy in deciding whether to undergo the treatment, test, or procedure or whether to make a choice among a variety of treatments, tests, or procedures. In the exercise of that autonomy, the informed patient also has the right to refuse to undergo any of these treatments, tests, or procedures. . . . Performing an operative procedure on a patient without the patient's permission can constitute 'battery' under common law. In most circumstances this is a criminal act. . . . Such a refusal [of consent] may be based on religious beliefs, personal preference, or comfort." *ACOG. Informed refusal. Committee Opinion No 237, June 2000.*

These legal and medical ethical principles make sense for both women and children. Doctors are not infallible and their advice is just that, advice. In addition to the consensus of medical organizations, courts, too, have long recognized a patient's right to make health care decisions free from governmental intrusion. However, in the case of a pregnant woman refusing potentially beneficial medical treatment for the fetus, the principle has been too easily set aside, and for dubious reasons.

Not An Isolated Case

For example, earlier this year a woman in Pennsylvania went to a hospital ready to

deliver her seventh child. For reasons that remain far from clear, the hospital decided she needed a C-section and when she refused they went to court. They asked for and won an order giving the hospital custody of the fetus before, during and after delivery and the right to take custody of the pregnant woman and force her to undergo the surgery. She and her husband fled the hospital and delivered a perfectly health baby without surgery.

Similar cases abound. In one Georgia case, doctors got a court order claiming that without a C-section a baby had a 99 percent chance of dying and the woman a 50 percent chance of dying. The court granted the order, the woman fled and delivered a healthy baby vaginally. Neither women nor children are protected by a system that makes women flee from hospitals or subjects them to unnecessary surgery.

Angela Carder was not as lucky. This case occurred in the early 1990s and garnered national attention. After the 25-weeks pregnant Carder became critically ill with cancer, she, her family and attending physicians agreed to focus on prolonging her young life for as long as possible. The hospital however sought a court order forcing her to have a C-section. Despite testimony that the surgery could kill her, the court concluded that the fetus had a right to life and ordered her to be cut open against her will. The surgery was performed: the fetus died within two hours and Angela died within two days with the C-section listed as a contributing factor. No one suggested arresting the doctor or hospital officials for murder. The life and death of Angela Carder focused national attention on the propriety of using courts to determine medical treatment for pregnant patients and inspired a chorus of diverse voices to condemn coercive medical treatment.

Ayesha Madyun survived. She was forced to have a C-section based on the claim that she had been in labor too long and that her baby was at risk of dying from an infection. Her request to be allowed to wait longer before having the surgery so she could try natural delivery was portrayed to the court as an irrational religious objection to surgery. The court granted the order and after Madyun had been forcibly cut open they found that there was in fact no infection.

The ability to get a court order or threaten pregnant women with arrest has many negative consequences beyond denying pregnant women rights and performing unnecessary surgery that poses health risks to both the pregnant woman and fetus. In an Illinois case, doctors sought a court order for a forced C-section claiming the pregnant woman and her husband held irrational religious beliefs opposing all surgery. Instead of spending time with the patient, the doctors ran to the court. The court refused the order, the baby was delivered naturally, and it turned out that if the doctors had spent the time communicating with the patient and her family rather than judging them and rushing to court, they would have learned that it was misunderstanding not an absolute objection to surgery that made it appear that this couple was refusing a recommended (but unnecessary) C-section.

Strategy Of Distraction

Responding to a chorus of opposition to the arrest, the press and the prosecution are now depicting Melissa Rowland as irrational because they claim she suffered from mental

illness, and immoral because she used drugs. In addition to the serious questions these comments raise about violations of patient's rights to medical privacy, it is clear that all adults "even those with mental disabilities" have a right to informed consent. If mental illness had truly been an issue, resorting to civil competency procedures not the criminal law was the proper thing to do. As for the allegations of drug use, Utah has as a matter of statutory law chosen to deal with issue of pregnancy and drug use through the public health and child welfare systems, not the criminal law. This decision comports with 48 other states and the unanimous recommendations of leading medical and child advocacy groups.

Today both the law and medicine agree that coerced medical interventions on pregnant women are an abuse of medical and state authority and that while pregnant women do not always make the right decision, in America, it is the person on whom the surgery is to be performed who gets to decide. In spite of this, Utah prosecutors apparently think that a pregnant woman who exercises her constitutional and common-law right to refuse medical advice can be arrested for murder. This is not only a clear misuse of the law, it is dangerous to children and fundamentally dehumanizing to pregnant women and their families.