Why Can't We Force a Cesarean?

A woman from abroad was in labor for her eight vaginal delivery. Her mother and younger sister were present with her. Only the younger sister spoke English so she translated for us. Outside the laboring room the doctors expected this to be a quick delivery, but something happened. The baby's heart rate started to decline. Everyone panicked and the doctors rushed to the patient's room.

They all spoke in hushed tone while reviewing the fetal heart tracing. The baby needed to be delivered by C-section. It was not doing well and we could not wait any longer for a vaginal delivery. Once this was translated, the mother declined. No C-section. They would wait. Doctors repeated that the baby was sick and specifically wanted an answer from the laboring patient. She also declined and said to wait. The doctors reiterated to the family the baby could die without a cesarean. I just stood there thinking: why can't we just force her to have a cesarean? If abortion laws protect a third trimester baby, then shouldn't there be laws protecting a full term fetus?

During that time I was a third year medical student on my OBGYN rotation. I was unfamiliar with the laws on "forced" cesarean sections. The doctors I worked with that night were quiet in their decision-making. No one was discussing what to do about this mother who was opposing a cesarean. I was left frustrated and confused. Do we just stand here and watch the baby die? Who (if anyone) gets into trouble if the baby dies? I needed to find out.

First off, the very idea of a forced cesarean can only exist in an "individual rights-based culture and a system that protects patient authority in decision making" (Ikemoto, 1998). In other words, I would not have even questioned the notion of forcing a cesarean if a woman did not have the right to say "no" in the first place. In fact, court ordered cesarean surgeries in the United States have been around since the early 1980s (Ikemoto, 1998). Since my experience happened in New York, I decided to focus on laws of this state. According to the website for New York State Laws and Regulation, surgical intervention for labor can only be performed after the woman has given informed consent. This means that not only must she must be in the capacity to understand the risks and benefits, she must sign a form giving the physician permission to proceed. This stems from constitutional law, which states that a competent person can refuse medical procedures. It is battery if a physician does not get informed consent and continues the procedure anyways (Miller, 2005).

My first question was answered: if a woman does not give consent for a cesarean then she cannot be forced into getting the surgery against her will. Yet what about the fetus? Doesn't the state have an interest in protecting human life? In fact, some courts have balanced the rights of the fetus against rights of the mother. Their reasoning stems from abortion cases. They claim that since the state has interest in protecting a fetus after viability (hence their authority in regulating abortions), they must extend that authority to cesareans (Finer, 1991). Yet arguments against this logic state that just because the state has interest in regulating abortions, does not mean it has equal interest in ordering a cesarean for a viable fetus. Nothing about abortion regulation says anything about forced cesarean sections for the benefit of the fetus (Levine, 1994). There is also a big difference between aborting a fetus and refusing a cesarean. Abortion terminates life, while choosing vaginal delivery does not end life it just lessens the chance for fetal survival (Levine, 1994).

Although the constitutional right a patient has to refuse medical procedures is not diminished during pregnancy (Ikemoto, 1998), there are guidelines physicians are exposed to that say otherwise. For example, The Committee on Bioethics for the American Academy of Pediatrics claims that a physician can oppose a woman's refusal as long as *all* three factors are met:

1. There is reasonable certainty that the fetus will suffer irrevocable and substantial harm without the intervention

2. The intervention has been shown to be effective,

3. The risk to the health and well-being of the pregnant woman is negligible.

Despite this scenario, a competent woman *still* has the right to refuse medical intervention according to the Constitution. But does her fetus have rights at all? There are three models that entertain this question. The first: the fetus has full rights of a person. This leads to conflict with the mother's autonomy and can lead to a coercive society against pregnant women (Isaacs, 2003). The second model: the fetus has no rights at all and only acquires rights at birth. This is the one that supports autonomy and informed consent the most (Tran, 2013). The third model is that the fetus has rights with increasing gestation, as supported by the differences in early and late term abortion laws (Tran, 2013). Today, the fetus does not have the same constitutional rights as someone currently living (Levine, 1994). However, throughout the years it has been granted certain rights (such as property rights), and the trend toward granting the fetus more and more rights has only further supported the notion that a mother should be prosecuted for not acting in the best interest of the fetus (Miller, 2005).

So if a woman has the right to refuse, why do doctors get the courts involved anyways? The physician faces a dilemma: proceeding with an unwanted procedure would result in battery, but agreeing with the mother may do harm to the second patient (the fetus). So the logical step would be to go to the courts, and avoid battery charges while saving the fetus. These court orders could be given within hours or even over the phone (Levine, 1994). In this situation, a lawyer represents the hospital, another the patient, and a third represents the interests of the fetus. A judge can be summoned to the hospital to see the patient and the physicians. The pressure to order a cesarean is significant especially when the mother's refusal is "difficult to understand, confused, or vacillating, or when it seems to be based on ill-defined, poorly articulated religious or cultural scruples" (Curran, 1990). Interestingly, some state laws exclude pregnant woman from making health management decisions. Feminist theory calls attention to these situations and asks the question: "If the patient were not pregnant and was refusing treatment, would her wishes be respected?" (Townsend, 2012). I never thought about this because it seemed so obvious to me. Shouldn't a woman be treated equally regardless of whether or not she is pregnant? It would not make sense for a woman's constitutional rights to diminish for nine months and then resume.

Now what if my patient's fetus had died? Could she be charged with murder? Successfully prosecuting for refusal to have a cesarean has several obstacles. First off, the state cannot prosecute a woman for refusing a cesarean if the Constitution states the right to refuse medical treatment. Second, there are no statues addressing "refused cesareans," so a prosecution would need to use other statutes that *could* apply. This often fails, as the courts often find that the statutes used in the argument were not intended to be used in that way (Miller, 2005). For example, in certain states, the Child Endangerment Statute cannot be used for a fetus because a fetus is not considered a "child." Some states rely on the argument that if a mother can be prosecuted for drug use during pregnancy, which harms the fetus, why not be prosecuted for refusal of a cesarean? But this argument does not hold because while a woman does not have a right to use drugs, she does have the right to refuse medical treatment (Miller, 2005). Another interesting argument is that once a woman has decided to carry to term, she is obligated to do whatever it takes to save the life of the fetus (Tran, 2013). \But what if the mother's life was also at risk? This would have complicated things. The classic case is placenta previa, where the placenta covers the birth canal and vaginal delivery would result in death for both mother and child. Often times, "medical beneficence" is exercised which is basically prevention of unnecessary death, and in this scenario physicians often justify getting a court order for cesarean section (Tran, 2013). The trend is that when both lives are at risk, a court order will often be approved. However, this still goes against a woman's constitutional rights (Levine, 1994).

Finally, do socioeconomic factors of the patient affect a doctor's decision for a forced cesarean? A 1987 report in New England Journal of Medicine found that of 21 ordered cesarean cases analyzed, 81% of the women were minorities. The issue of race in medical care is beyond the scope of this reflective piece but nonetheless important as my patient was neither American nor English speaking. Another very interesting study by Samuels et al (2007) looked at the ways lawyers and obstetricians viewed court ordered cesarean sections. Both lawyers and obstetricians were more likely to get one if the husband disagreed with the mother, if the respondents had children themselves, and if the healthy woman in question was carrying a healthy fetus. This shows that however obvious the constitutionality a woman's decision may be in refusing a cesarean, those in positions to refute that decision can be influenced by several external factors. Thus attempts to go against a woman's decision may reveal more about biases than medical risk (Ikemoto, 1998).

Looking back I wonder how my attitude would have changed towards my patient and the doctors had I been armed with all this knowledge. I certainly would not have felt as lost, in fact, I might have even offered an opinion. And although I remember feeling that the situation that night was gray, after doing my research, it seems very black and white to me. It's her right to refuse. Period.