

Informed Consent in Childbirth: Making Rights into Reality

By Hermine Hayes-Klein
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STAYING THE COURSE

"No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual by the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. To compel any one, and especially a woman, to lay bare the body or to submit it to the touch of a stranger, without lawful authority, is an indignity, an assault, and a trespass."

—United States Supreme Court, *Union Pacific Railway v. Botsford*, 1891

**INFORMED CONSENT IN CHILDBIRTH
MAKING RIGHTS INTO REALITY**

By Hermine Hayes-Klein



Abstract of problems in U.S. maternity care often focus on medical factors and not women, especially those in the health care policy. But a deeper understanding of the issue and the nature of medical intervention in the individual experience of childbirth can lead to an individual consent.

Keywords: *Informed Consent*

Across the United States and around the world, people are waking up to the fact that America can afford to have the women and babies. The more technology improves, the more we know about the human body and the mind. The more we know about the human body and the mind, the more we know about the human body and the mind. The more we know about the human body and the mind, the more we know about the human body and the mind.

Introduction: The right to informed consent is a fundamental principle of medical ethics. It is the right of a patient to be fully informed of the risks and benefits of a proposed medical intervention and to make a voluntary decision about whether to accept or refuse that intervention. This right is enshrined in the Hippocratic Oath and is a cornerstone of the medical profession. In the United States, the right to informed consent is protected by the 14th Amendment to the Constitution, which guarantees the right to life, liberty, and property without due process of law. The right to informed consent is also protected by the American College of Obstetrician-Gynecologists (ACOG) and the International Federation of Obstetrician-Gynecologists (IFOG).

Conclusion: The right to informed consent is a fundamental principle of medical ethics. It is the right of a patient to be fully informed of the risks and benefits of a proposed medical intervention and to make a voluntary decision about whether to accept or refuse that intervention. This right is enshrined in the Hippocratic Oath and is a cornerstone of the medical profession. In the United States, the right to informed consent is protected by the 14th Amendment to the Constitution, which guarantees the right to life, liberty, and property without due process of law. The right to informed consent is also protected by the American College of Obstetrician-Gynecologists (ACOG) and the International Federation of Obstetrician-Gynecologists (IFOG).

Talking Points

- ❖ Hermine Hayes-Klein, a human rights lawyer, mother, and director of Human Rights in Childbirth dedicated to making human rights in childbirth a meaningful reality for women all over the world, discusses the reasons why informed consent in childbirth is so important, and how we can make these rights a reality when making medical decisions. Her discussion is focused on child birth, but a larger discussion of informed consent, and the rights to decide about our own bodies in a growing medical bureaucracy, is an important discussion to be having.
- ❖ “Dysfunction in modern maternity care are entrenched in complex and convoluted systems of hospital policies, insurance policies, culture and emotion.” (37) What can be done to “use medical technology judiciously, to optimize outcomes and promote public health?” Hayes-Klein explains that one basic legal clarification could serve as an important start, and that principle is: “All citizens have the right to informed consent in healthcare, and that includes the right to refuse medical interventions.” (37)
- ❖ “Informed consent rests upon an assumption that, despite the esoteric nature of medical knowledge, ordinary people can assess their medical alternatives and make a decision about them – including a decision to go against their doctor’s advice.” (40)
- ❖ The right of informed consent is protected in the 14th Amendment “promise that nobody will be deprived of ‘life, liberty or property without due process of law.’” Rights-based codes of ethics are also practiced and promoted by the American College of Obstetrician-Gynecologists and the International Federation of Obstetrician-Gynecologists.
- ❖ Hayes-Klein includes numerous actual experiences from laboring women demonstrating that these rights-based codes of ethics, and the federal laws of informed consent, are not always being followed. Hayes-Klein argues for policy and protocol changes that recognize and support the consumer’s right to make an informed choice.
- ❖ The example of “VBAC bans” offers an area where women are being refused care and support if they choose to birth vaginally after a previous cesarean section. These policies “keep women from being supported in the decision to take on the very small risk that they might need an emergency cesarean section in a vaginal birth.” Instead, women who have had previous c-

sections must “consent” to another planned and scheduled c-section. The author interprets this requirement as coercion, since the consent is given under threat. “Coercion can include the threat of harming the person if they do not consent, or the threat of withholding something that the person would ordinarily expect to receive.” Hayes-Klein asks whether and increasing number of women can no longer expect to receive support for a vaginal birth?

- ❖ What should informed consent look like? Hayes-Klein offers three parts: **Inform, Advise, Support**. Inform women about their healthcare alternatives, not just the one a doctor thinks they should choose. Explain the risks and benefits, and the evidence for each. Care providers should leave their opinion out of the initial information. Only after the information has been given, should a health care provider give an opinion. They should include the reasons for the advice. This is when a health care provider should also admit to any areas where they lack experience. Is the doctor suggesting a c-section for a breech baby because they are not trained in breech births? Once the woman is informed and advised, support that decision, even if she does not follow your advice. “It isn’t informed consent unless the patient has the ability to choose an alternative other than the one that the provider recommends.” (40)

Resources

Full references for each article are available at <http://pathwaystofamilywellness.org/references.html>

A very thorough blog by an instructor in midwifery on the comparative risks of VBACs (or the threat of uterine rupture) with the risks of c-section - <http://midwifethinking.com/2011/02/23/vbac-making-a-mountain-out-of-a-molehill/>

The National Organization of Women voted to oppose VBAC bans in 2005, considering choices of how to birth are fundamental reproductive rights of women - <http://www.now.org/issues/reproductive/vbac.html>

Useful resources on creating a birth plan - <http://www.birthingnaturally.net/birthplan/Basics/what.html>

Thomas Sartwell. “Electronic Fetal Monitoring: A Bridge Too Far.” *Journal of Legal Medicine* Online. September 19, 2012. <http://www.bmpllp.com/publications/376-electronic-fetal-monitoring-bridge-far>

Elizabeth Rosenthal. “American Way of Birth, Costliest in the World.” *New York Times Health* Online. June 30, 2013. www.nytimes.com/2013/07/01/health/american-way-of-birth-costliest-in-the-world.html?pagewanted=all&_r=2&

Pregnant women do have the right to informed consent (see “Ask a Lawyer” Response below), but rights often have to be acknowledged and asserted. We have rights of informed consent, but laboring women need to understand their rights in order to ensure their protection.

“Ask a Lawyer” Response - <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1595027/>