A Patient Has a Right To Refuse a Urinary Catheter

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J.D. Candidate 2015

Healthcare today, like the rest of American law and politics, is evolving. At times it seems as if whenever a patient goes to a doctor's office or checks in at a hospital there are different policies, procedures, and forms to follow. Despite the seemingly hurried insistence of hospital staff, every patient of sound mind maintains a right to control how their healthcare provider conducts their treatment. The Supreme Court of the United States has held that each individual of "sound mind" has the right to choose which procedures their body incurs. Oftentimes, amidst the profit driven healthcare system, patients are viewed as a mere bottom line that gets in the door, receives assistance, and must get back out the door in order to get a paycheck from the patient or an insurance company. Despite any catchy advertisement claiming otherwise, each healthcare system today is still a big business operating to stay afloat in the midst of a suffering economy. Regardless of this perception and seeming reality, Americans do not have to take the word of the hospital staff while suffering in pain, bleeding, or are in immediate need of treatment. Each patient maintains a choice as to how their care is conducted, despite what any provider may try to convince them. Being informed about the rights a patient maintains before being checked in at a hospital may help ensure nothing is done against a patient's will during his hospital stay. In fact, many hospitals provide each patient a copy of their rights as they are checked for treatment.

For a variety of reasons, many people do not wish to have certain procedures performed on them. These could include blood transfusions due to religious beliefs, not to be resuscitated in the event one's heart stops, or not to have certain procedures performed on them by a member

of the opposite sex. An example of such an issue would occur if a provider wanted a patient to have a urinary catheter inserted and for some reason the patient did not wish to have one.

What is a Urinary Catheter?

A urinary catheter is a flexible tube placed through the urethra and into the bladder. To place a catheter in a female, the healthcare provider separates the labia and inserts this tube through the urethral opening. In male patients the healthcare provider holds the penis and inserts the tube through the urethral opening. This procedure is performed using sterile technique to reduce the risk of infection by introducing this "foreign object" into the body. These devices are placed for multiple reasons including, but not limited to: monitoring accurate fluid volume output, surgical procedures, obtaining a sterile urine specimen, urinary retention, anuria (not being able to urinate), hip fractures, pelvic fractures, prolonged immobilization due to injury or mental state, and to aid in the healing of deep sacral wounds. Urinary catheters are also commonly placed when a patient arrives to an emergency department unconscious so a urine specimen may be quickly sent to the lab to analyze if the unresponsive patient has an infection or bleeding. Some patients wish that a catheter either not be placed or wish to have a provider of the same gender perform this procedure. Often patients wake up surprised to have a urinary catheter in place after surgery. The question remains, does this violate a legal right?

Physicians and Hospitals Must Comply With Health Regulations.

Hospitals are regulated by statutes, regulatory commissions, and insurance reimbursement guidelines. In the healthcare setting there are numerous agencies that operate to ensure Americans get the most current and quality care when they seek treatment across the nation's hospitals. Regulations are based on past experience, medical and clinical research, and

modern trends in medicine. One of the major regulatory organizations setting today's medical practice standard is the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). This non-profit organization monitors the quality of care provided by healthcare facilities. When hospitals achieve national accreditation they receive more reimbursement from insurance providers.

Payment Can be Withheld if a Hospital Doesn't Comply.

Just like any other business, hospitals have a "bottom line." Even if operating as a non-profit hospital, it must analyze its cost base analysis and maintain an ability to pay business related expenses. Hospitals obtain the majority of income through reimbursement for care provided to patients insured by Medicare and Medicaid. Other reimbursement to hospitals comes from private insurers and payments made by patients. Medicare rules are very strict regarding what care will be reimbursed to a hospital and also require hospitals to be "accredited," meaning it must maintain certain standards of quality. If a hospital violates these regulations, it risks the loss of a significant portion of available profit for each patient. At times, a patient checks in for one illness and develops another during their hospital. When this occurs, Medicare often will not cover the cost of treating that "hospital acquired illness." Examples of such non-covered hospital acquired illnesses include pneumonia while on a ventilator, bed sores, and urinary tract infections not present in the patient when they arrived to the facility in question.

Doctors Owe a Legal Duty to Their Patients.

The legal starting point to ensure your right to refuse a catheter would be to ensure your caregiver is aware of your wishes. As long as a patient is alert and oriented, meaning they are able to answer certain questions asked by the healthcare provider in the correct manner, the

patient has a right to refuse any treatment. In certain situations a patient has a power of attorney, meaning another person has authority to make healthcare decisions for him. If you are a patient in an emergency room and the staff believes you need to have a urinary catheter placed, it is best to politely inform the provider you do not want that procedure performed on you. It is as simple as the nurse or doctor writing in your chart that you refused that procedure. Some hospitals may ask you to sign a waiver form stating they medically felt you needed to have a catheter placed and you therefore assume any resulting liability from not having it placed. In a surgical setting, it is prudent to state in writing your wish not to have the catheter placed and have it signed by the doctor who is to perform the surgery. All surgeries require a consent form to be explained to you by the surgeon. This form is then signed by the patient and the surgeon thereby forming a legal contract between the surgeon and patient. It is, therefore, prudent to write on the form that you don't want a catheter placed and list your reasons why. It would also be a good idea to request a copy of that form for your records after it is signed.

Patients often are under the misconception that they are at the mercy of the hospital or the doctor and do not have any choices regarding their care. Different states interpret laws governing medical practice differently, there are, however, many different legal options available to patients who have a urinary catheter placed against their wishes. These legal options begin with the relationship between the physician and patient. The law itself has recognized every patient has a right to determine their own course of treatment. Most patients do not themselves hold a collegiate degree in medicine, so must place trust in those who have. This creates a legal duty in the physician to provide a certain level of quality to each patient and adhere to standards and regulations in place where he is in practice. Medical and legal standards are not governed by the same regulatory boards, but legal standards can be used to ensure that medical standards are

adhered to. One of the biggest aspects of the special duty a doctor owes to his patient is insight the doctor can provide the patient regarding available treatment options. A patient has the right to make an informed decision regarding what course of treatment they wish to pursue. Thus, because of the doctor's level of knowledge, the patient places his trust in the capabilities of the doctor, creating a higher duty on the physician's part to protect his patient.

A Doctor Must Have a Patient's Consent to Perform Medical Procedures.

Prior to performing a procedure on a patient the physician must obtain the patient's consent. Because of the nature of the relationship the patient and doctor maintain, the doctor's role in obtaining this consent requires him to provide knowledge and information to the patient in order to ensure the patient is able to make an informed and intelligent decision. Generally speaking, guidelines regarding disclosure require the doctor to inform the patient of any material risks that could arise from having the treatment, as well as any available reasonable alternatives to the proposed treatment. The measuring standard of what is "material" consists of what a patient needs to know in order to make an intelligent choice regarding whether or not the risk associated with the proposed treatment would cause the patient to choose not to undergo the procedure. This is not up to the individual physician, rather what a similar physician with the particular physician's medical knowledge would disclose in similar circumstances. The disclosure must be made in language that particular patient is capable of understanding. With a surgical consent form it is the physician who must provide any required disclosure and have the patient sign the form. Therefore, a nurse may not bring in the surgical consent form and have the patient sign it unless she was present at the time the surgeon disclosed the contents of the form.

How Does the Consent Doctrine Apply to Insertion of Urinary Catheters?

Most surgeries do not actually necessitate the insertion of a urinary catheter. Among the National Patient Safety Goals JCAHO has implemented is the monitoring of insertion of un-necessary urinary catheters due to research showing that one of the leading types of hospital acquired infections is a urinary tract infection. Urinary tract infections, especially in the elderly, can be deadly and are easily avoided by not introducing a catheter into the bladder without medical cause. Therefore, the medical standard for disclosure should logically lead the physician to disclose such information to the patient prior to performing such an invasive procedure. A majority of court jurisdictions require a medical expert to testify as to the custom of what should be disclosed. To hold a physician liable for failing to obtain informed different states have varying views, however, generally the risk the patient was not informed of must occur and the patient must suffer harm from that particular risk. In other words, a patient would need to have a directly resulting harm from the insertion of the catheter. The patient has to prove if she had been informed of that particular risk, such as infection, she would not have allowed the procedure. It is not enough the patient himself say he would not have allowed the procedure; rather the standard is what a reasonable patient would have done if adequately informed.

There are numerous complications that could arise from insertion of a catheter including bladder trauma, bleeding, prostate injury, urinary tract infection, not being able to urinate, and urethral injury. Urinary tract infections are one of the main reasons behind the research performed by the Center for Disease Control and acceptance of the research by JACHO that has led to the implementation of actions by hospitals to reduce the number of catheters being inserted. These risks are significant when combined with how invasive this procedure is and leads this author to believe if a catheter is being placed, especially absent medically necessity,

informed consent should be obtained even though that is not frequently the case in a surgical setting.

Sometimes, when faced with a failure to obtain consent lawsuit, a physician may claim he had a privilege not to disclose material risks because there was an emergency. In this circumstance, the burden of providing evidence through expert witnesses is on the doctor, and there are specific court rules governing who may be categorized as an expert witness. The patient, however, doesn't have to provide expert witnesses regarding the significance of the risk on their decision. In general, the doctor or defendant must take the patient as he finds them, meaning the decision whether or not to forego the procedure would apply directly to that patient; other jurisdictions apply a reasonable patient standard and leave it for a jury to decide.

A Hospital May Also be Liable for a Doctor's Actions.

Some states also allow a hospital to be held liable for the actions of the physician. Often, physicians or surgeons are not actually employees of the particular hospital in which they practice. If a patient has been wronged by a physician in a state that does not allow the hospital to be brought in, it potentially may be brought in anyway if the physician's competence was not adequately ensured. If a hospital negligently granted practicing privileges to a physician, some states will allow the hospital to be party to the lawsuit as well. Additionally, some states allow the hospital to be brought into the suit if it was negligent in supervising the physician. Some hospitals even have what is known as a "chaperone" policy in which a person of the same sex must be present in the room during intimate invasive procedures, especially in cases of past recklessness on the part of the physician. If that policy is violated the hospital also could potentially be held liable for the actions of the physician in states that do not typically allow that.

Interestingly, some state statutes mandate even what information a surgical consent form must contain. Generally, the consent form is provided by the hospital itself. This author suggests as soon as the form is signed by the physician and the patient, the patient request a copy for their records. Most consent forms contain a clause stating the patient has asked all questions and obtained a reasonable answer from the physician. However, due to the superior knowledge of the physician, if he did not disclose the risk of infection or death from the insertion of the catheter, the patient surely could not be expected to possess that knowledge on their own. Thus is the very importance of why doctors are held to such a higher duty where their patients are concerned.

Does the Legal Tort of Battery Apply in These Cases?

If a physician performs a procedure on a patient without obtaining consent, he could be held liable for the tort of battery; however, the patient must be able to prove the doctor intended to cause harmful or offensive contact to the patient. It is logical this would be extremely difficult to prove because a doctor ordering a urinary catheter is not likely to be attempting to intentionally hurt or cause harm to the patient. Potentially, if a patient tells a doctor why they wish not to have a catheter inserted, for example previous sexual assault, discomfort, embarrassment, etc., and the doctor orders the catheter anyway, the case may be stronger that physician intended to cause offensive contact. Given this intent would be difficult for a patient to prove, it is prudent to write your wishes on the consent form prior to the physician signing it. Several states have created a special legal option for this situation, medical battery, occurring if a physician performs a procedure without consent or performs surgery on a body part not covered under the consent obtained. Statutes in some states determine if the patient should file a battery or a medical malpractice claim, and some allow both, making it prudent to consult an attorney.

Could These Types of Cases be Considered Medical Malpractice?

Medical malpractice is another potential legal option available to a patient who has a catheter placed without consent while in surgery. Different states have different rules regarding medical malpractice and some do not even allow this claim. For example, some require a panel of physicians and healthcare providers to conduct a review of the evidence before allowing a patient to even file a malpractice claim. There is always a presumption the physician acted appropriately, making it the patient's responsibility to prove the doctor caused the alleged harm by performing a procedure that deviated from the accepted medical standard. This requires expert witnesses as to the medical standard, which in the past may have been difficult. However, with recent advances in research surrounding the many complications arising with catheter usage, this may become easier.

A Legal Claim for "Medical Monitoring" May Also Apply.

Another legal option is called medical monitoring, and potentially allows a patient to hold a provider liable for a urinary tract infection resulting from the negligent placement of a catheter. Generally, to prove negligence one must owe a duty to another, breach that duty, cause an injury and that injury must produce damage. Medical monitoring is not recognized in all states, however, it allows recovery when one negligently introduces a toxic substance proven to significantly increase the risk of infection or latent disease into the body of another. Given the amount of research regarding the drastic increased risk of infection through introduction of a urinary catheter into the bladder, it seems plausible this requirement may be met. Typically, the physician is not the provider inserting the catheter, rather a nurse or aide. This legal option

would depend on whether the court would consider bacteria a "toxic substance with a proven increased risk of infection" and being able to prove the person inserting it did not conform to standard procedures for placement.

A Patient Could Also be Reimbursed For Resulting Emotional Harm.

Some torts also allow monetary damages to be awarded for one's emotional distress in certain jurisdictions. Distinction lies in whether the healthcare provider intentionally, recklessly, or negligently caused the emotional distress. For this legal action to be available the patient must have suffered severe emotional distress. The decision of whether the actions of the provider were "extreme and/or outrageous" enough to warrant application of emotional distress as a legal remedy is one the judge must make before allowing a jury to hear this making it all the more important to inform your provider the significant reasons you do not wish to have a catheter.

What if it's a Nurse That Inserts the Catheter Against the Patient's Wishes?

Most units in a hospital setting, be it an emergency room, operating room, or inpatient unit, have standard protocols and physician orders nurses are allowed to follow under common circumstances prior to a physician evaluation of the patient. These often include the drawing of certain labs and administration of certain medications. These orders are signed off by physicians and used for all of that physician's patients. Common situations where this might occur would be an operating room preparatory area in which a nurse is to start an IV, insert a catheter, and have the patient undress. Other situations might include patients arriving to the emergency room with a complaint of chest pain in which a nurse is to obtain specific labs, an EKG, administer aspirin, etc. Nurses on an inpatient unit may have standing orders to administer medicines for common complaints such as fever, pain, or heartburn. Physicians then will make any necessary

changes to those orders after personally evaluating the patient. Nurses must have a physician's order to perform any procedure or administer any medication unless they are operating under a hospital authorized protocol; however, a nurse and physician may not directly speak regarding a patient's care prior to the implementation of the standing order by the nurse. Many times a patient will inform a doctor they do not want a certain procedure or request certain accommodations and the physician agrees, yet the message is not passed along to the nurse providing the care. It is prudent, therefore, to also advise the nurses if you wish not to have a catheter placed. The physician retains ultimate responsibility for his patient's care, potentially allowing the physician to be legally responsible if the nurse was not informed of the deviation from the standard order and an unwanted procedure was performed; for instance if a patient was under anesthesia and could not tell the nurse about their refusal.

In Conclusion…

It is important if you feel like your patient rights have been violated that you seek the advice of an attorney quickly after the incident occurs because time periods are different in each jurisdiction, allowing only a certain amount of time after an incident in which a suit may be filed. It is crucial to begin obtaining your medical records as soon as possible. An attorney can help the patient do this, however any patient has the right to access their medical records. Foundationally, it is well established that a patient does have the right to determine what happens to their body. Perhaps with recently published medical research these cases will become easier to prove in the legal system. This author finds it encouraging that health care standards have started trending away from the insertion of catheters unnecessarily. In the meantime, patients should work with their legislators to create laws regulating this type of unnecessary procedure to

safeguard patient wishes in addition to being vigilant in making their wishes known to their provider.

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