



## Informed Consent

### *A Woman's Right to Equal Treatment in Medicine*

written by:  
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**I**T IS NOT JUST A CLUMP OF CELLS. ... WE WISH WE WOULD HAVE HAD TO PAY FOR AN ULTRASOUND AND BEEN ABLE TO VIEW IT. ... WE WISH WE WOULD HAVE EVEN HAD THAT OPPORTUNITY, TO BE TOLD THE TRUTH," ONE WOMAN TOLD A REPORTER FROM THE *TAMPA TRIBUNE*. AS PART OF OPERATION OUTCRY, ON JUNE 10, 2010, TWO DOZEN WOMEN, WHO REGRETTED THEIR OWN ABORTIONS, TRAVELED TO TAMPA, FLORIDA TO URGE GOVERNOR CRIST TO SIGN A NEWLY-ENACTED FLORIDA RIGHT TO KNOW BILL.<sup>1</sup>

"The doctor never conferred with me. ... I wasn't given any information on what they were going to do or how. I was just taken in and taken care of, as they put it. I was never given the choice of whether I would want to allow adoption or anything," Linda E. wrote about her own abortion at [www.pregnant-pause.org](http://www.pregnant-pause.org), a website devoted, in part, to allowing women to tell their own stories about abortion.<sup>2</sup>

Pro-life testimonials and newspaper interviews provide a narrow glimpse into the deep, heart-wrenching pain and regret women suffer after an abortion—and how they were told very little before

their baby was ripped from their wombs. Our culture is saturated with organizations and politicians demanding rights for women. Yet, these same voices remain deafeningly silent when it comes to a woman's right to know the risks and consequences of an abortion. Following a Supreme Court decision upholding the constitutionality of real informed consent laws for abortion in 1992, a growing number of state legislatures have responded to these women's cries and have enacted laws requiring detailed counseling and/or a reflection period before an abortion.<sup>3</sup> Many state's legislatures, including North Carolina, have ignored their pain, while still waiving the banner of women's rights and freedom.

### Un-Informed Consent

Often, pro-lifers, in their desire to end the slaughter of millions of unborn children, assume that women made an informed choice to allow an abortionist to kill their child, and they should now be left to live with the harrowing consequences of that decision. Yet, in truth, most of these women were never given that chance.

A 2004 study found that 84 percent of women seeking an abortion said they did not receive adequate counseling; 79 percent were not told about available alternatives and 67 percent said they received no counseling at all. Sixty-four percent felt pressured into having an abortion.<sup>4</sup> Another study found that 81 percent of women surveyed felt victimized by the abortion process.<sup>5</sup>

## The Consequences

The physical and emotional consequences of having an abortion have devastated women. One study found that 65 percent of women studied experienced multiple symptoms of post-traumatic stress disorder (PTSD), which they attributed to their abortions. A little over 14 percent reported all the symptoms necessary for a diagnosis of PTSD. Other studies have linked abortion to increased risk of anxiety, substance abuse, sleep disorders, suicidal behavior, and depression.<sup>6</sup>

The risk of physical harm and the long-term effects of abortions have been documented also. One study revealed that early complications from abortion can include hemorrhaging, infection, perforation of the uterus, cervical lacerations, and thromboembolic complications including pulmonary infarction and deep thrombosis of the legs.<sup>7</sup> Other studies show that induced abortion may contribute to ectopic pregnancies,<sup>8</sup> miscarriages<sup>9</sup> and breast cancer.<sup>10</sup> In his book, *Aborted Women – Silent No More*, David Reardon, Ph.D., concludes that a minimum of 10 percent of women suffer physical complications from abortion.<sup>11</sup>

As the Supreme Court has stated, abortion is “inherently different from other medical procedures, because no other procedure involves the purposeful termination of potential life,”<sup>12</sup> which is nothing less than a life at its genesis. It is a procedure that, in most cases, does nothing to enhance the life or wellness of the patient, but can cause tremendous physical and psychological damage, even when “successful.” Considering these stakes, women need to be protected and informed about exactly what is entailed in the decision to go through with having an abortion.

## The Law Has Failed

In a country that prides itself on individual liberty and autonomy, it is unthinkable that women are being denied the right to real informed consent. After all, every state in the country has medical informed consent statutes designed to insure that patients are adequately informed and consent to all medical procedures prior to a procedure being performed.

Perhaps adequate for other procedures, these laws have failed to protect women seeking abortion. Some scholars believe the problem lies in fundamentally flawed informed consent laws and the pecuniary interest of the person entrusted to

provide the information and secure the consent—the doctor.<sup>13</sup>

## Defining Consent

Consent is a common law defense to the legal civil claims and criminal charges of assault and battery. “Informed consent” requires enough information to be able to weigh the pros and cons of a decision before making it.

Consent in medicine is a right to understand the benefits and risks of a medical procedure and to consent to it before it is performed. While generally recognized in common law, the principle of informed consent was first expressed in American courts by Justice Cardozo, when he sat on the New York Court of Appeals. In *Schloendorff v. Society of New York Hospital*<sup>14</sup>, the justice stated, “Every human being of adult years and sound mind has the right to decide what shall be done with his own body.” Subsequent cases imposed a duty on physi-

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cians to provide sufficient information to a patient to afford the patient the right to make an informed decision.<sup>15</sup>

## Medical Knowledge

Traditionally, reflecting a paternalistic nature of the doctor/patient relationship in medicine, state laws have given the physician wide latitude in deciding what to tell the patient. As long as the physician provides information that meets “community standards,” the information given meets the required legal threshold and protects the doctor from malpractice. This type of informed consent law is a “physician-centered” standard.

A growing respect for patient autonomy prompted some state legislatures to abandon physician-centered consent. First recognized by the D.C. Court in 1972, some states and the District of Columbia have replaced the physician-centered standard with a “reasonable patient” standard. To meet this threshold, the doctor should adequately provide information that a “reasonable patient” would want to consider, including the risks of the procedure and the possible long-term effects to the patient’s health. As the Court stated, “It is the prerogative

of the patient, not the physician to determine for himself the direction in which his interests seem to lie.”<sup>16</sup> The information given must be material to the patient’s decision and the doctor must be confident that the patient understands these risks. The discussion should include: treatment and non-treatment options, and the benefits and risks of each; short-term risks during the procedure; long-term effects of all the treatment and non-treatment options; and the available public and private insurance coverage for the procedure.<sup>17</sup> With either standard, however, there is a therapeutic privilege which allows the physician to withhold information when the physician believes the “information would present a threat to the patient’s well-being.”<sup>18</sup>

As we have witnessed over the past 30 years, by misapplying the “therapeutic privilege,” abortionists have denied women the right to know much at all about the baby, the procedure, or the physical and psychological risks they face with an abortion. When women do ask and receive “counseling,” it is merely a “sales pitch” for the abortion.<sup>19</sup> Abortionists have driven a truck through this narrow exception for informed consent, and have stream-rolled

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women in the process.

### Money

Why do abortionists refuse to inform women? The answer is money. While one would hope that all doctors have the best interest of their patients in mind, the financial gain from performing abortions trumps patient interests and undercuts any desire to discuss risks. Most abortions are performed in free-standing clinics. In 2008, 378 specialized abortion clinics nationwide accounted for 21 percent of all abortion providers, but performed 70 percent of all abortions. The same year, 24 percent of abortions were performed in non-specialized clinics. In contrast, only 4 percent of all abortions were performed in hospitals.<sup>20</sup>

Whether the physician who is performing the abortion owns the clinic or is an employee of the clinic, the pecuniary interest of the institution cannot be ignored. In 2009, a director of a Planned Parenthood abortion facility made national headlines when she disclosed that Planned Parenthood pressures employees to meet abortion goals each month. As reported by Lifesitenews.com, Abby Johnson, an ex-director of Planned Parenthood in Texas, said she grew uncomfortable when she was told to try to bring in more abortions because of the economic downturn. “Every meeting that we had was, ‘We don’t have enough money, we don’t have enough money—we’ve got to keep these abortions coming.’”<sup>21</sup> The lives of babies and their mothers have been reduced to numbers on a balance sheet.

Mounting evidence suggests that real informed consent (including a reflection period) results in fewer abortions.<sup>22</sup> Because real counseling reduces dollars in the pocket of the abortionist or his employer, they do not want women to know the truth about abortion.

### Real Informed Consent

According to the Guttmacher Institute, as of January 2011, 34 states require that women receive counseling before an abortion is performed; 32 states require that women be given information about the specific procedure and 19 require information about all common abortion procedures. Twenty-four of these states detail the information that must be given, 22 of which require information about abortion risks. Twenty-five states require a waiting period—usually 24 hours—between the counseling and the abortion. Seven states require that the counseling be provided in person and before the waiting period begins. Ten states require information on the ability of the fetus to feel pain. Ten states require information on accessing ultrasound.<sup>23</sup>

According to Americans United for Life, states continue to enact and to strengthen laws protecting women seeking abortions. In 2010, South Carolina extended its one-hour reflection period to 24 hours. Missouri enacted a true detailed informed consent statute with a 24 -hour waiting period. Missouri, Oklahoma, and Tennessee enacted measures requiring the posting of signage informing women that they cannot be coerced into having an abortion. At least three states—Missouri, South Carolina and West Virginia—considered measures to require counseling on possible fetal pain during the abortion. Missouri enacted a law requiring that for a woman seeking an abortion at or after 22 weeks, she be counseled on fetal pain. Missouri amended its law to require an abortion provider to offer the ultrasound to every woman seeking an abortion. Utah and West Virginia now require that, if an ultrasound is performed before an abortion, the abortion provider must offer to show it to the patient.<sup>24</sup>

## Promoting Women's Freedom

The North Carolina General Assembly has ignored the rights of women to know the whole story about abortion. Until now, many legislators have been satisfied with allowing abortionists to leave women uninformed about the realities of abortion, the risks involved or even who the doctor is who is performing the abortion. North Carolina law treats abortions like any other medical procedure, using a physician-centered standard and upholding the “therapeutic privilege.” In North Carolina, an abortionist does not need to say much of anything to meet the requirements of the informed consent statute and protect himself/herself from the malpractice claim of negligence or a criminal charge of battery.<sup>25</sup>

The North Carolina Legislature has an opportunity to change this travesty and really protect North Carolina women. A bill should be enacted this year and require the following:

- At the time of the appointment for the abortion, a price list for counseling, ultrasounds and abortions and locations where the counseling and ultrasounds can be provided other than at the abortion clinic, including locations providing free services.
- A 24-hour waiting period between counseling and abortion to provide the woman with time for reflection after she has received counseling.
- Information given orally and in writing by a physician, physician assistant, or registered nurse (including doctors, P.A.s and nurses unaffiliated with the abortion facility) regarding:
  - Gestational age of the unborn child.
  - Name of the doctor performing the abortion.
  - Liability of the father for support.
  - Location of the hospital within 30 miles of the abortion site where the physician has admitting privileges.
  - Alternatives to abortion.
  - The right of the woman to withhold consent at any time.
  - If the physician has liability insurance or admitting privileges.
- Detailed information provided in writing and given to the woman regarding:
  - Physical characteristics of unborn children at two-week gestational increments.
  - Information on services available to help the woman carry the baby to term, aftercare and care for women with dependent children.
  - Information on the legal obligations of the father to provide at least financial support of the child.
  - Information on other facilities providing counseling and ultrasounds, includ-



ing facilities providing these services free of charge.

- Other requirements, including:
  - An ultrasound as part of the counseling 24 hours before the abortion is scheduled to be performed. The mother will be offered the opportunity to see the ultrasound at least 24-hours before the scheduled abortion.
  - Reporting requirements regarding counseling and effect. Penalties for non-compliance.
- Penalties for Failure to Provide Informed Consent

## Conclusion

Cease the deception. Uninformed consent is no consent at all. In fact, it is a form of tyranny. North Carolina must join other states in granting to women a freedom they have never enjoyed. If legislators are truly interested in the lives of women and their right to make informed choices, they will support a law guaranteeing to women the right to know and understand about the unborn child they are considering aborting, see an ultrasound, and know the gestational age of the child. They have a right to know the realities of the abortion procedure, including the risks involved, and the right to reflect on that decision after this counseling and before the abortion. The consequences of that decision, for women and their babies, are dire. Mothers deserve the freedom to know the truth, and babies deserve the chance to live that comes with their mother being truly informed about the decision she is facing. ❖

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