

Testimony: SB17-284 Women's Information Act
By Wendy Smith, Nurse Practitioner

As recently as March of 2017, a Joint Commission on Accreditation publication noted -

“Informed consent is the process of communication between a clinician and patient that results in the patient’s decision of whether or not to undergo a specific medical intervention. It is important that a patient fully understand the nature, risks, benefits and alternatives of their treatments and make an informed choice before a physician or other health care professional begins a treatment, test, or procedure...

“What is concerning is that research has shown that the process of obtaining informed consent is all too frequently minimized to a signature on a form. That’s unfortunate because this can result in a situation where a patient provides authorization for care but may not have an understanding of the care they are consenting to receive.”¹

I am here today to advocate for women’s right to be fully informed prior to an abortion. Being fully informed is pro-choice in that once a woman is fully informed about her pregnancy and options, she is thus equipped and empowered to participate in the decision-making process regarding her care.

Once a woman has a positive pregnancy test, an ultrasound is a safe and accepted procedure and should be required to confirm a viable (live) intrauterine pregnancy, to rule out an ectopic pregnancy, to determine whether there is a single pregnancy or multiple, to determine gestational age, and to rule out an intrauterine mass/malignancy (e.g. hydatiform mole). According to the American College of Obstetricians and Gynecologists, “ultrasound measurement of the embryo or fetus in the first trimester is the most accurate method to establish or confirm gestational age.”² Failure to perform an ultrasound prior to an abortion could endanger the woman’s health, potentially resulting in her death (e.g. as in missed ectopic pregnancy, or complications during abortion procedure based on incorrect gestational age).

The Health Insurance Portability and Accountability Act (HIPPA) Privacy Rule gives patients the right to inspect, review, and receive a copy of their medical records.³ Women have a right to know the result or findings of their ultrasound. They have a right to see the ultrasound and have it explained to them, including gestational age and fetal heart rate/beat.

Every one of you on this panel today has right to see your imaging studies and have them explained to them. Why would you not fully support this bill and ensure every woman in Colorado has the same right and empowerment when it comes to abortion procedures, ultrasound, and informed consent?

“Informed Consent” basically means that a physician or health care provider, must tell a patient all of the potential benefits, risks, and alternatives involved in any surgical or medical procedure, or form of treatment, and must obtain the patient’s written consent to proceed. Informed consent is based on the concept that a physician has a duty to disclose information to the patient so that he or she can make a reasonable decision regarding treatment – in this case abortion.⁴ The physician also has a duty to ensure that the patient or their designated guardian understands the information provided. In some courts, to perform a procedure without providing informed consent could be considered battery.

The American Congress of Obstetricians and Gynecologists Committee Opinion on informed consent states,

“Seeking informed consent expresses respect for the patient as a person; it particularly respects a patient’s moral right to bodily integrity, to self-determination regarding sexuality and reproductive capacities, and to support of the patient’s freedom to make decisions within caring relationships. Informed consent not only ensures the protection of the patient against unwanted medical treatment, but it also makes possible the patient’s active involvement in her medical planning and care.”⁴

Women have the right to

- The right to safe and effective care, which includes an ultrasound prior to abortion (medical or surgical).
- The right to be involved in the decision-making process related to care/procedures
- The right to review medical records/imaging and to have the information explained.
- The right to obtain a photo of the baby, depending on gestational age, a picture of the body (e.g. not just of the top of the head).
- The right to be told of care alternatives, including resources available to help her through her pregnancy or adoption should she decide against abortion. (Alternatives should be discussed regardless of their cost and regardless of whether they will likely be covered by the patient’s health insurance).
- The right to know the nature of the abortion procedure (e.g. details of medical or type of surgical abortion), including risks (e.g. perforated uterus or cervix, infection, hemorrhage, infertility) and benefits.
- The right to be informed about the potential reversal of medical abortion after the first pill is taken, or after luminaria is placed and contact information for providers who will assist if she changes her mind.

- The right to request the opinion of a consultant, or second opinion. If the woman desires another ultrasound for confirmation, this is her right and she should be provided with information regarding centers where ultrasounds are provided for free.
- The right to be referred to a high-risk pregnancy specialist if an anomaly is suspected for further testing/evaluation (e.g. genetic screening, amniocentesis or Chorionic Villus Sampling) to confirm anomaly, prior to proceeding with an abortion.
- Women have the right to be afforded time to consider options or to be referred for second opinion, or for referral to high-risk pregnancy specialist - without undue pressure to proceed with the abortion procedure. If an emergent situation (e.g. ectopic pregnancy), she has a right for emergency consult.

In essence, women have the right to informed consent which is not minimized to a signature on a form. Citizens of Colorado have a right to expect that you, their representatives, ensure they are fully informed, as this is a patient safety issue and in their best interest. When done properly, informed consent, including the review of ultrasounds, discussion of options; risks, referrals, etc, opens a dialogue and opportunity for the women to ask questions. This increases her empowerment, and can help to prevent medical errors or complications in some cases. Whether abdominal or vaginal, an ultrasound is an important component of informed consent prior to an abortion.

According to the Agency for Healthcare Research and Quality

“...studies have shown that improved communication between practitioners and patients leads to improved patient outcomes, less medical errors, and lower rates of malpractice claims. Adequacy of the informed consent process has been more firmly linked to patient satisfaction.”⁵

Ultrasound is commonly used for OB/GYN procedures and has been shown to be a safe procedure when performed properly by trained professional.

References

1. *The Joint Commission, 3/1/2017*
https://www.jointcommission.org/dataline_tjc/informed_consent_process/ Accessed 4/4/17
2. ACOG Committee Opinion: Method for Estimating Due Date. Number 611, October 2014.
<http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Obstetric-Practice/Method-for-Estimating-Due-Date> Accessed 4/4/17.
3. Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule
<https://www.hhs.gov/hipaa/for-individuals/guidance-materials-for-consumers/index.html> Accessed 4/4/17
4. Findlaw. *Understanding Informed Consent – A Primer*
<http://healthcare.findlaw.com/patient-rights/understanding-informed-consent-a-primer.html>. Accessed 4/4/2017
5. ACOG Committee Opinion: Informed Consent. Number 439, August 2009.
<http://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Ethics/Informed-Consent> Accessed 4/4/17
6. Agency for Healthcare Research and Quality. *Making Health Care Safer II: An Updated Critical Analysis of the Evidence for Patient Safety Practices*. AHRQ; 2013 March.
<https://www.ncbi.nlm.nih.gov/books/NBK133402/> Accessed 4/4/17

Additional resources: Importance of patient education/informed consent and empowerment in decision making

Institutes of Medicine

institute of medicine healthcare safety and patient education

American Medical Association

<https://www.ama-assn.org/sites/default/files/media-browser/code-of-medical-ethics-chapter-2.pdf>

American Nurses Association

https://courseweb.pitt.edu/bbcswebdav/institution/Pitt%20Online/Nursing/NUR%202008/Module%2001/Readings/ANA_ethics.pdf

Example of Colorado legal case from this year, 2017, against Planned Parenthood

Ayanna Byer – claimed negligence, battery, lack of informed consent, false imprisonment, breach of fiduciary duty (trust).