Medical Battery: When Patient Rights Conflict with Quality of Care

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An important legal issue with ethical, monetary, and patient care implications involves the revocation of informed consent and the potential for a medical battery lawsuit. In performing medical or surgical procedures, patients frequently tell healthcare providers to "stop". In 2015, the authors conducted a survey of healthcare providers and the results are analyzed. Case law is reviewed, ethical considerations are discussed and suggestions are made for recognizing when a physician should stop a procedure and thus avoid a potential legal conflict.

INTRODUCTION

In performing medical or surgical procedures, healthcare providers frequently are told to "stop" by patients. Sometimes these situations involve patients attempting to avoid something as simple as instillation of eye drops or a part of a routine medical examination. For instance, a claim was brought against an ophthalmologist for failing to remove an automatic blood pressure cuff during a procedure to remove a small mass from a patient's lower lid. *Coulter v. Thomas,* 33 S.W. 3d 522 (Ky. 2000) is a case that stunned many observers in both the medical and legal communities. According to court records, Mrs. Coulter was 53-years old, totally disabled by rheumatoid arthritis, was 5'3" tall and weighed 250 pounds. In this case, Mrs. Coulter consented to a 15-minute procedure to have a small mass removed from her lower eyelid by Dr. Kent Thomas, an ophthalmologist. To monitor her blood pressure during the procedure, an automatic blood pressure cuff (ABPC) was placed on Mrs. Coulter's arm. After the first inflation, Mrs. Coulter demanded that the ABPC be removed. The cuff was not removed until after the second inflation and subsequently Mrs. Coulter sued Dr. Thomas for medical battery based on revocation of consent. The lower court failed to instruct the jury on medical battery and Mrs. Coulter appealed to the Supreme Court of Kentucky where she won on appeal. The Supreme Court held that the jury should have received instructions on medical battery and sent the case back to the trial court.

When a healthcare provider is asked to stop a procedure, legal and perhaps ethical issues are raised. Cases addressing revocation of consent and medical battery are reviewed in this paper. Additionally, physicians and healthcare providers were surveyed and asked whether patients have ever revoked consent, and if so, what were the circumstances and their responses. The results of the survey are examined. Ethical considerations are discussed and suggestions are made to avoid unwanted litigation.

MEDICAL BATTERY

Battery consists of an unwanted or unauthorized touching. Battery may be a crime or an intentional tort. Although battery may be a crime, if a doctor is trying to render beneficial treatment, states are reluctant to prosecute for the crime of battery (Richards, 2016). Thus, medical battery is usually a tort (civil cause of action for money damages). Battery may occur with an unauthorized touching or when a patient revokes consent to continue treatment. Negligence (malpractice) or harm is not a necessary element of the tort of battery.

A healthcare provider does not have the right to touch a patient without consent. This is an important principle for a clinician to remember, even if a procedure is being performed in the best interest of the patient. In a landmark case, Justice Cardozo summarized a physician's responsibility to obtain a patient's consent as follows: "Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient's consent commits an assault for which he is liable in damages. This is true except in cases of emergency, where the patient is unconscious and where it is necessary to operate before consent can be obtained." *Schoendorff v. Society of New York Hospital,* 105 NE 92, 93 (N.Y. 1914).

"The primary consideration in a medical battery case is simply whether the patient knew of and authorized a procedure." *Blanchard v. Kellum,* 975 S.W.2d 522, 524 (Tenn. 1998). Thus, if consent is absent, the intentional tort of battery may be present and the healthcare provider may be sued for damages. It is interesting to note that medical battery, unlike medical malpractice, does not require expert testimony.

Once a patient knows of and authorizes a procedure, what is required for a patient to revoke consent to proceed? In *Mims v. Boland*, 110 Ga. App 477, 138 S.E. 2d 902 (1964) the plaintiff alleged that she revoked consent for a barium enema. In spite of her objection, the enema was administered. In the Mims case, the court adopted the following two-pronged test to determine whether a patient has effectively revoked consent after a procedure is begun. To constitute an effective withdrawal of consent after treatment or examination is in progress and potentially subject medical practitioners to liability for assault and battery if treatment or examination is continued, the following two elements are required:

"(1) The patient must act or use language which can be subject to no other inference and which must be unquestioned responses from a clear and rational mind. These actions and utterances of the patient must be such as to leave no room for doubt in the minds of reasonable men that in view of all the circumstances consent was actually withdrawn.

(2) When medical treatments or examinations occurring with the patient's consent are proceeding in a manner requiring bodily contact by the physician with the patient and consent to the contact is revoked, it must be medically feasible for the doctor to desist in the treatment or examination at that point without the cessation being detrimental to the patient's health or life from a medical viewpoint." *Mims v. Boland,* 110 Ga. App. 477, 138 S.E. 2d 902, 905 (1964).

For instance, during a cataract procedure, the operation can be safely aborted up until the point that the anterior capsule is opened. Prior to that event, there is minimal risk to the patient; however, after the capsule is opened, there would be adverse consequences associated with aborting the procedure and the patient would have to return for emergency intervention.

South Carolina is the only state that does not recognize a cause of action for medical battery based solely on revocation of informed consent. In *Linog v. Yamplosky*, 656 S.E. 2d 255 (S.C. 2008), the plaintiff was under the influence of anesthesia when she purportedly revoked consent to continue with osseous gum surgery. The plaintiff asked the court to recognize a medical battery claim based on revocation of consent and the court declined to agree. Specifically, the court held that "in order for a patient to pursue a claim stemming from a situation involving lack of or revocation of consent, a physical touching within the medical context, and a resulting injury, the patient must bring this claim under the medical malpractice framework." *Linog v. Yamplosky,* 656 S.E 2d 255 (S.C. 2008). In other words, the patient would have to prove negligence and provide expert testimony to support his or her claim.

SURVEY RESULTS

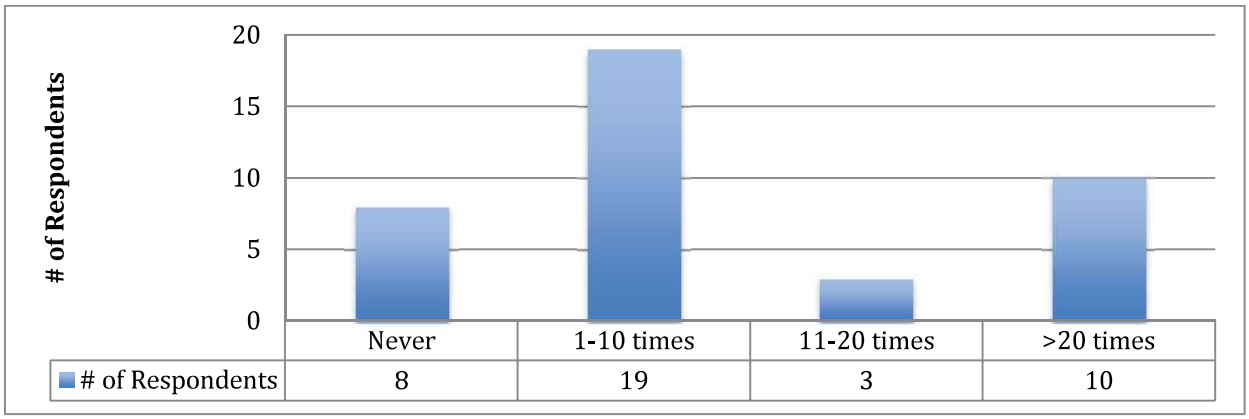
The 2015 Healthcare Survey was sent to 80 healthcare professionals with an overall response of 50%. Forty healthcare professionals responded -- 11 females and 29 males. The respondents from various medical fields are represented in **TABLE 1** below.

TABLE 1
RESPONDENTS BY SPECIALTY

SPECIALTY	
Cardiologist	2
Emergency Medicine	3
Family Doctor	7
General Surgeon	2
Gynecologist	2
Nephrologist	3
Nurse Anesthetist	7
Nurse Practitioner	2
Ophthalmologist	3
Optometrist	3
Orthopedic Surgeon	1
Pediatrician	2
Radiologist	2
Other (not specified)	1
TOTAL	40

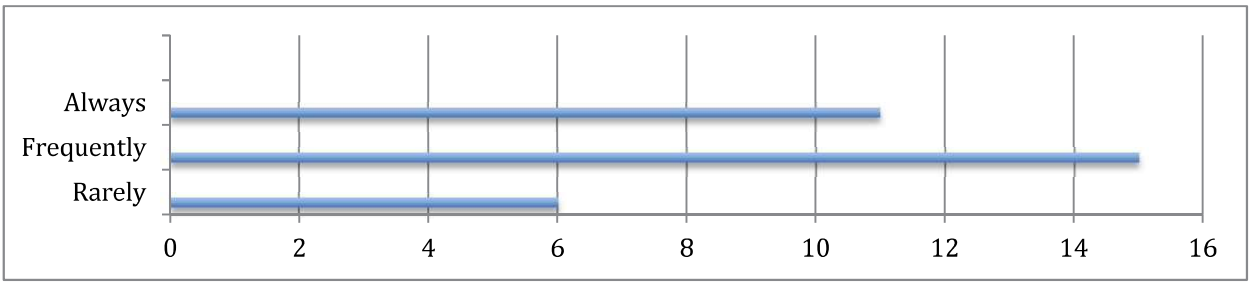
When asked, "During a medical test or surgical procedure, has the patient ever asked you to stop?", 80% (32) of the respondents answered "Yes" and 20% said that they have never been asked to stop a treatment. **FIGURE 1** shows the number of times survey participants have been asked to stop a medical procedure.

FIGURE 1
NUMBER OF TIMES ASKED TO STOP A MEDICAL/SURGICAL PROCEDURE



To avoid the possibility of a lawsuit for battery, a healthcare worker should be prepared to react appropriately when a patient revokes consent. **FIGURE 2** illustrates the 2015 Healthcare Survey reponses to patient requests to stop a medical test or surgical procedure.

FIGURE 2
PROCEDURE WAS CEASED IN RESPONSE TO REQUEST TO STOP



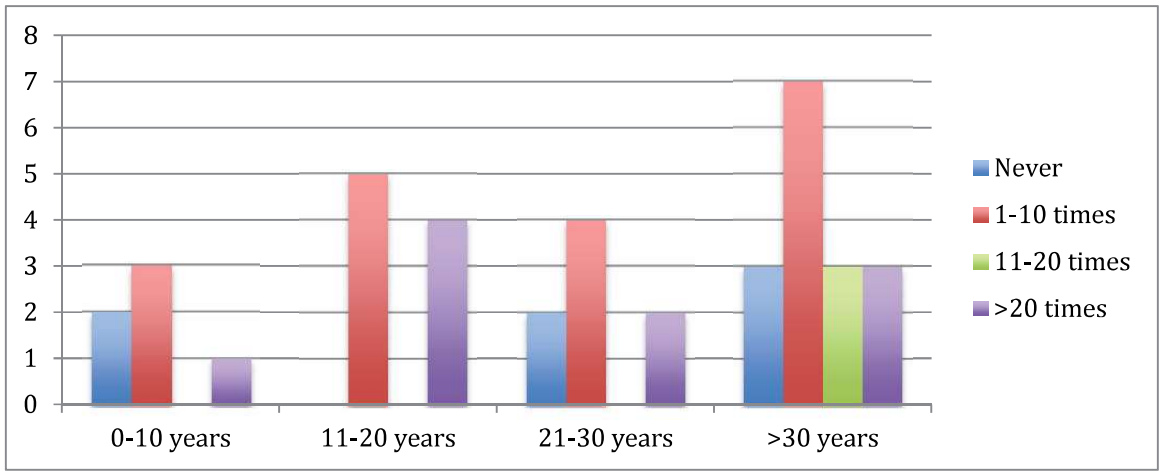
The 2015 Healthcare Survey indicated that 19 of the patient requests to stop involved what the provider considered a preferred practice, 12 patient requests involved an optional practice and 7 of the procedures were classified as "Other". "Other" procedures were self-identified by the healthcare providers as epidurals, pap smears and echocardiograms. Even though not identified as a preferred practice, these "other" procedures could arguably fall under the spectrum of standard of care. In **TABLE 2**, the types of procedures that patients requested to have stopped and the number of healthcare workers identifying each type of intervention are noted in order of frequency.

TABLE 2
TYPES OF PROCEDURES PATIENTS REQUESTED TO STOP BY FREQUENCY

Draining Abscess	12	Throat Exam	2
Starting IV	9	Breast Exam	2
Rectal Exam	8	Setting Fracture	2
Numbing for Sutures	8	Biopsy	2
Ear Exam	7	Regional Block	2
Debriding Wound	7	Stress Test	2
Blood Pressure	7	Barium Enema	2
Drawing blood	6	Central line access	2
Pelvic exam	6	Ear irrigation	1
Epidural	6	Catheter	1
Anesthesia mask	4	Liquid nitrogen treatment	1
Giving a shot	4	Naso-gastric tube	1
Checking eye pressure	3	Shining a light in an eye	1
Instilling eye drops	3	Finger stick	1

Early in a medical practice, a healthcare provider may be asked to stop a treatment. In the 2015 Healthcare Survey, all of the healthcare providers in the 1-10 year category had been in practice less than 5 years. Two-thirds of the "new providers" have been asked to stop procedures, and, thus, it's important for nascent healthcare providers to be aware of the patient's right to stop a procedure. Of the 2 respondents that indicated that they had never been asked to stop, both were eye care providers. **FIGURE 3** compares the number of years in practice to the number of times a physician has been asked by a patient to stop.

FIGURE 3
NUMBER OF TIMES ASKED TO STOP BY YEARS IN PRACTICE



Note: One of the survey respondents did not indicate the number of years in practice; however this physician indicated that patients asked him to stop 1-10 times. This respondent is not represented on the above chart.

ETHICAL CONSIDERATIONS

The 2015 Survey may indicate either a failure to recognize revocation of consent or perhaps admit that a patient has ever told a healthcare worker to stop (among those survey respondents who denied having been asked to stop). For instance, the 2015 Survey included three Emergency Medicine physicians who had both been in practice for more than 30 years, practicing in the ER at the same hospital—one said that he had never been asked to stop a treatment or procedure while the other two physicians reported that they had been asked to stop more than 20 times each.

Failure to recognize revocation of consent could subject a healthcare provider to a lawsuit based on medical battery—an unwanted touching. At the moment that consent is revoked, the physician is required to stop, if medically feasible. To do otherwise is to risk a civil lawsuit. If a healthcare worker is sued for battery, he/she must put forth a defense and this could be time consuming, expensive and stressful.

CONCLUSION

The 2015 Healthcare Survey raises an interesting ethical question. If, for instance, a patient is checked in to see their eye care physician and then refuses dilation and/or a pressure check, can the doctor adequately assess the health of a patient's eyes? In the event that a patient is uncooperative, should a physician continue, or is failure to perform these preferred practices a dereliction of duty? It is not unusual for a patient to ask a healthcare provider to stop a treatment or procedure. Continuing to perform a beneficial medical treatment or procedure without a patient's consent may be medical battery. It is extremely important for providers to recognize when consent has been revoked and if it is medically feasible, to stop. Since there may also be a conflict between the patient's rights and the standard of medical care, it is critical for the provider to determine if the intervention is medically indicated. If it is determined that the procedure is necessary, or at least beneficial, then the provider should explain the value to the patient and obtain permission to continue. Following this explanation, if consent is not obtained, then the physician should document the patient's refusal. The above suggestions should help minimize the conflict between standard of care and patient rights.

REFERENCES

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