Case

A 40 year old white female is brought into the Operating room for a scheduled Cesarean section. Informed consent was obtained for the procedure prior to the procedure. After the baby is delivered the patient is fully sedated to control her pain, which was inadequately controlled by spinal anesthesia. During the closure the surgeon noted a skin growth on the patients abdomen and promptly removed it and stated that he would do the patient a “favor” and remove the lesion. The rest of the operation proceeds to conclusion without incident or complications.

Background

Nonmalfeasance and beneficence are two of the four basic principles of medical ethics. Nonmalfeasance denotes doing no harm to the patient while beneficence denotes the ethical principal instructing the physician to provide as much real and potential benefit to the patient through medical treatment as possible while limiting the real and potential harms the patient may experience from treatment (1,2). At one point in time beneficence was considered the physicians primary responsibility to the patient (2). However, in 1908 the ruling in the case of “Schloendorff v. The Society of New York Hospital” added the idea of autonomy to the ethical and legal ideas of the day. Physicians were now no longer allowed to act to benefit the patient unless the patient also agreed to the
treatment or in cases of emergency when patient consent cannot be obtained.

This idea was the beginning of the principal of autonomy (2).

Autonomy is another of the four basic principles that guide medical ethics. Autonomy is the idea that each individual ought to be able to make decisions about his own care according to his own values (1,2). To protect this right the concept of informed consent has been developed as both a legal and ethical entity. Informed consent has three processes, Disclosure of information about the patient’s diagnosis to the patient, therapeutic alternatives or choices in the treatment of the diagnosis, and the risks and benefits of each alternative treatment (2).

Both ethically and legally the surgeon is required to provide information according to the “reasonable person standard,” denoting the information that a reasonable person would need to know to make an informed decision regarding his treatment. This includes what can be expected to be the limits of treatment effectiveness, goals, risks, benefits, and discomforts associated with the treatment. Legally this need not be sufficient for every patient but only for a “reasonable” patient although ethically the goal should clearly be the general understanding of the treatment options. Therapeutic alternatives should be presented in a similar fashion with the goal not to explain every possible complication to the patient but to convey to the patient the types and seriousness of potential complications. Essentially the patient should be informed enough to understand the risk of both his current situation and the risk of the treatment or treatments for the without being coerced or frightened into an unreasonable
course of action by an overzealous presentation of the risks or benefits of any particular course of action (2).

These are not only important from the ethical and legal points of view of a patient exercising their right to make their own medical decisions, but also to safeguard the patient’s therapeutic relationship with the physician which must necessarily be based on this trust. This relationship is essential as medical decisions are made because the physician is a substantial source of both medical information and experience for the patient. Ideally the patient and the doctor work out a plan that is mutually acceptable. This ensures that the patient’s goals and desires can be obtained as much as possible while at the same time making a decision based on sound medical experience and clinical judgment (1,2).

Clearly the process of informed consent and the idea of autonomy should be followed and respected at all times. In this case the liberty taken by the surgeon seems minor and was clearly motivated by his desire to help, and thus benefit, the patient. But this action clearly violates the idea of patient autonomy and beneficence without consent is not a valid justification for the surgeon to take action in this nonemergency instance. In addition to this the small procedure was done ad lib while the patient was unconscious and so clearly the patient failed to give consent at any time for this procedure. As stated above this action was not ethically sound but also could potentially expose the surgeon and the hospital to significant litigation and financial loss.
In fact in 1986, in “Niccoli v. Thompson, a court concluded that an “unnecessary” surgical operation violated the standard of care and granted the plaintiff the right to a new trail after the first jury trial granted only low damages associated with the procedure. The term unnecessary in this case denotes a medical procedure in which the patient was not informed and did not give consent beforehand for the procedure that was performed. Thus, performing any non-emergency procedure without patient consent is an unwise and potentially illegal venture (3).

Given the current climate of lawsuits and ever increasing scrutiny concerning medical decisions, autonomy and informed consent may take an ever-increasing importance in medical decision making while the idea of beneficence may become less important. As physicians we must continue to provide excellent and ethical care for patients while simultaneously navigating the ever more complicated medical legal system. As such, the future promises a continued evolution of the current values and ethics in medicine.
References

