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Court cases revive debate about rights of mothers during childbirth

By David B. Caruso, Associated Press, 5/19/2004 11:12

PHILADELPHIA (AP) Amber Marlowe was a seasoned pro at delivering big babies her first six each weighed close to 12 pounds. So when she went into labor with her seventh last winter, she brushed off doctors who told her the 11-pound, 9-ounce girl could be delivered only by Caesarean section.

But the medical staff at Wilkes-Barre General Hospital wouldn't budge, not even with her track record. "All my others, I've done naturally," Marlowe recalled telling her physicians. "I know I can do it."

So Marlowe checked herself out and went looking for a new doctor.

While she was on her search, Wilkes-Barre General's lawyers rushed to court to get legal guardianship of her unborn child, giving the hospital the ability to force Marlowe into surgery if she returned.

The case is one of several in recent months that have revived a debate about whether mothers have an absolute right to choose when, where and how they give birth even if the health of their baby is at stake.

A spokesman for the American Hospital Association wasn't immediately sure whether the organization has ever taken a position on the issue.

Some groups representing doctors, including the American College of Obstetrics and Gynecology, have said that physicians should refrain from doing procedures unwanted by pregnant woman, and that use of the courts to resolve conflicts is almost never warranted.

Marlowe ended up at another hospital, where she had a quick, natural birth she described as "a piece of cake." She didn't know about the first hospital's action until her husband was told by a reporter.

"They don't know me from anything, and they're making decisions about my body?" she said. "It was terrifying."

Officials with Wilkes-Barre General did not return calls seeking comment.

In Salt Lake City, an acknowledged cocaine addict with a history of mental health problems resisted having the operation for about two weeks before acquiescing. One of the twins she was carrying died during the delay. The mother was charged with capital murder but ultimately pleaded guilty to a lesser charge of child endangerment and was sentenced to probation.

Last month, prosecutors in Pittsburgh charged an unlicensed midwife with involuntary manslaughter for failing to take a woman to the hospital when her baby began to be delivered feet-first. The child died two days later. The midwife said she had been trying to honor the mother's wishes to have the baby at home.

And in Rochester, N.Y., a judge in late March ordered a homeless woman who had lost custody of several neglected children not to get pregnant again without court approval.

Some women's advocates said the cases illustrate a newfound willingness by legal officials to interfere with women's choices about their pregnancies.

"My impression is that we have a political culture right now that falsely pits fetal rights against women's rights, and that you are seeing a kind of snowballing effect," said Lynn Paltrow, of the New York-based group National Advocates for Pregnant Women. "We're at the point now where we're talking about arresting pregnant women for making choices about their own bodies, and that's not right."

Legal experts and medical ethicists said attempts to prosecute women for pregnancy choices, or force them to undergo certain procedures for the benefit of their children, may be on shaky ground.

"There are 50 years of case law and bioethical writings that say that competent people can refuse care, and that includes pregnant women as well," said Art Caplan, chairman of medical ethics at the University of Pennsylvania.

In one influential case, a federal appeals court in Washington, D.C., ruled in 1990 that a judge was wrong to have granted a hospital permission to force a pregnant cancer patient to undergo a Caesarean in an attempt to save the life of her child. The mother and baby died within two days of the operation.

Doctors' opinions on forced care for pregnant mothers have changed, too.

A 2002 survey by researchers at the University of Chicago found only 4 percent of directors of maternal-fetal medicine fellowship programs believed pregnant women should be required to undergo potentially lifesaving treatment for the sake of their fetuses, down from 47 percent in 1987.

Dr. Michael Grodin, director of Medical Ethics at the Boston University School of Medicine, said doctors should seek court intervention when a mother refuses care only if the patient is mentally ill.

"Women have a right to refuse treatment. Women have a right to control their

bodies. It is a dangerous slope. What's next? If someone doesn't seek prenatal care, what are we going to do, lock them up?"