VIEWPOINT

Legal Threat to Infant Male Circumcision

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Despite a recent shift in pediatric policy in the United States toward support for newborn circumcision of boys,[1] the procedure continues to be challenged on legal and ethical grounds. In 2010, a ballot initiative in San Francisco, California, to ban the circumcision of male infants gained publicity, as did a decision by a minor court in Cologne, Germany, in 2012 that found the illegality of circumcision is among the "undecided questions of law," concluding the defendant was not guilty of a criminal act. New legislation was then passed in each jurisdiction protecting the practice. Nevertheless, while no court of law or government in the United States or elsewhere in the world has successfully enacted a ban on the circumcision of male minors, lobbying efforts by opponents continue unabated. Such campaigns contributed to the withdrawal of Medicaid coverage for elective male circumcision in 18 states.

On January 14, 2013, the Federal Prohibition of Genital Mutilation Act of 2013 was submitted to the US Congress.[2] This seeks an amendment to section 116 of Title 18, Part I, Chapter 7 of the Female Genital Mutilation Act of 1996 to make removal of the foreskin of boys younger than 18 years a criminal offense. The draft amendment invokes the highly questionable term *male genital mutilation* (MGM) to falsely equate male circumcision with the female procedure. A so-called MGM bill has been submitted to Congress every year since 2004.[2] Even foreskin retraction is proscribed in this document. Legislator responses each year have been published.[2]

In the present article, we evaluate the legislation upholding the right of parents to avail themselves of circumcision for their sons and protection of physicians who perform male circumcisions with parental consent. We also assess the legal challenges and the human rights arguments to this minor surgical procedure.

Parents can legally authorize surgical procedures in the best interests of their children.[1] The 2012 American Academy of Pediatrics policy statement asserts that:

...minors in the United States are not considered competent to provide legally binding consent regarding their health care, and parents or guardians are empowered to make health care decisions on their behalf. In most situations, parents are granted wide latitude in terms of the decisions they make on behalf of their children, and the law has respected those decisions except where they are clearly contrary to the best interests of the child or place the child's health, well-being, or life at significant risk of serious harm.[1(ppe578-e579)]

Likewise the United Nations Convention on the Rights of the Child 44/25 20 November 1989 states in Article 14(2):

States Parties [a country that has ratified or acceded to an agreement] shall respect the rights and duties of the parents and, when applicable legal guardians, to provide direction to the child in the exercise of his or her right in a matter consistent with the evolving capacities of the child.[3]

Exceptions to this general rule include those situations when a parent fails to act in the best interests of the child, for example, when refusing to consent for a treatment or procedure that would be likely to prevent serious harm. Even then, the law upholds the rights of those parents who decide against the vaccination of their children. As for vaccination, the benefit to risk ratio of infant male circumcision is very high.[4]

Circumcision opponents further argued, on a human rights basis, against the right of parents to choose circumcision for their infant sons. These individuals suggest that males should make their own decision once they are old enough. A more persuasive argument is that parents and physicians each have an ethical duty to seek the child's well-being, especially when the benefits outweigh the risks. In expert hands, neonatal male circumcision rarely results in an adverse outcome.[1,4] In referring to the public health benefit of male circumcision, it has been argued that "a violations-only approach to human rights advocacy is unduly limiting."[5] The alternative is to encourage change rather than punish transgressors. An extensive review pointed out that:

Although the issue of informed consent promises to be at the forefront of any ethical-legal debate on circumcision, it is notable that a parent or legal guardian is bound to make countless other decisions for their growing child over the years until they are legally considered adults, many of which will likely have a more profound effect on them than the presence or absence of a foreskin.[6(p391)]

The argument to delay the decision until the boy can decide overlooks the fact that medical and practical considerations weigh heavily in favor of circumcision during the neonatal period.[1,4] Male circumcision in infancy provides immediate protection from urinary tract infections, which can damage the pediatric kidney. A baby with urinary tract infection presents with fever, often leading to blood draws, a spinal tap, and, when urinary tract infection is diagnosed, hospitalization and intravenous antibiotics. Infant circumcision also protects against phimosis, paraphimosis, inferior hygiene, penile inflammatory disorders such as balanitis and meatitis, and other conditions seen not just in childhood but in adolescence and adulthood, when circumcision protects against genital cancers and sexually transmitted infections such as human papillomavirus, herpes simplex virus type 2, and human immunodeficiency virus.[1,4] In addition, surgical and anesthetic risk are minimized and the "greatest accumulated health benefits" are attained if male circumcision is performed close to birth.[1,4]

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Delay may also result in increased cost, longer healing time, a requirement for temporary sexual abstinence, interference with education or employment, and loss of protection from sexually transmitted infections for those who become sexually active early.[1,4] Importantly, the American Academy of Pediatrics and others note that the current scientific literature does not support the belief that male circumcision adversely affects penile sexual function, sensitivity, or sexual satisfaction.[1,4]

Ethicists have argued that, given the health benefits and low risk, denying male circumcision violates ethical principles and human rights.[7] We contend that the law has no place interfering in medical practice based on sound medical evidence, except to ensure competence and responsibility of the practitioner and full consent by parents and caregivers.

The American Academy of Pediatrics policy recommends that physicians should discuss the procedure and present its risks and benefits in an unbiased manner with all parents early in a pregnancy, in the expectation that some will proceed with having their newborn son circumcised whereas others will not.[1] While parents have the right to make this decision in the best interest of their sons, the decision must be an informed one.

Parents are expected to make decisions in their child's best interest. In Western democracies, we are unaware of legislation that prevents a parent from making medical decisions concerning procedures with potential benefits that are at least comparable with any harms. This principle is supported by the United Nations Convention of the Rights of the Child.[3] If parental choice is usurped when it comes to the desire of parents for circumcision of their male child, it would open the floodgates to other bans considered desirable by minority opposition groups, the vaccination of children being a pertinent example. Rather than legislators, physicians should be the final arbiters in deciding which medical procedures should be offered and parents should be the ones to decide which of those options is best for their child.

ARTICLE INFORMATION

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