



Byrom v. Johns Hopkins Bayview (Md. Ct. Spec. App.)

Topics Covered: Abusive Litigation Against Physicians

Issue

The issue in this case is whether a hospital can be liable for breaching the standard of care because it presented a high-risk pregnant patient with an alternative to a caesarian section, in other words, the hospital was found negligent for allegedly providing the patient with too much information.

AMA Interest

AMA supports curbing lawsuit abuse. And, patients have the right to receive information and ask questions about recommended treatments so that they can make well-considered decisions about care.

Case Summary

Erica Byrom was roughly 25 weeks pregnant when she was transferred to Johns Hopkins Bayview Medical Center (Hopkins) due to severe preeclampsia and other complications. She was 16 years old and had arrived in the country two months earlier from Liberia where she had not received adequate prenatal care. Byrom's adoptive mother was with her during her stay in the hospital.

Initially, an ultrasound determined that the fetus was less than 24 weeks old by gestational weight and had several complications. The Hopkins physicians told Byrom that there was a substantial risk that the fetus would not survive or would be born alive but with severe neurological and other disabilities. They recommended a cesarean section as the best option for the mother and the baby. They also discussed induction of labor, which they explained would entail substantial risk to the baby. The physicians also discussed terminating the pregnancy, but after further tests revealed the fetus's age to be 25 weeks, the hospital ruled out termination as an option consistent with its policy.

Byrom refused to consent to a cesarean section and repeatedly indicated, during the four days from her admission to delivery, that she wanted labor to be induced. She gave two reasons: she did not want all future deliveries to be by cesarean section and she was concerned about the pain of surgery. She was repeatedly encouraged to agree to a cesarean section as the safer, less risky option, but she maintained her decision. She signed a consent to induction of labor that detailed the substantial risks to the fetus of induced labor. The baby survived the delivery but is profoundly disabled.

Byrom, individually and on behalf of her baby, sued Hopkins for negligence and lack of informed consent. No individual physicians were named. At trial, Byrom's experts testified that the baby's injuries occurred during labor, one to two hours before delivery, and would have been avoided by a cesarean section. They argued that the Hopkins physicians gave the mother an unduly

pessimistic assessment of the prospects for the fetus, which convinced Byrom that the baby would die and led her to refuse a cesarean section.

Byrom's experts did not consider the fetus's gestational age, size, and other problems. Instead, the experts testified that the baby would have survived and would have been healthy if a cesarean section had been performed. Byrom's experts acknowledged that all the risks disclosed to the mother were required to be disclosed, but they testified that a more positive presentation of those risks, with greater sensitivity, would have caused Byrom to make a different decision.

In addition, Byrom's maternal fetal medicine expert testified that it was a breach of the standard of care to offer to induce labor. The only treatment that was indicated, he testified, was a cesarean section. While he acknowledged that without her consent her doctors could not perform a cesarean section, he testified that because she had consented to a cesarean section for maternal indications, the doctors should have continued encouraging her to consent to a cesarean section for fetal indications until eventually her condition worsened enough to put her at risk of a stroke, heart attack, and death, at which point a cesarean section could be performed for maternal indications.

Finally, Byrom's attorneys argued that offering to terminate the pregnancy sent a message that the baby would die, even though Byrom testified at her deposition that she never would have considered termination.

Ultimately, the jury found in favor of Byrom and awarded her \$200 million for future medical expenses and \$25 million in non-economic damages. This was notwithstanding that her experts had testified that the cost of her future medical care would at most be \$42 million. Hopkins filed motions for judgment notwithstanding the verdict and for a new trial. These motions were denied, although the court did reduce the award for non-economic damages as required by statutory cap.

The hospital appealed to the Maryland Court of Special Appeals.

Litigation Center Involvement

The Litigation Center, along with the Maryland State Medical Society, filed an *amicus* brief in the Maryland Court of Special Appeals. The brief discussed the importance of patient autonomy in informed consent.

Maryland Court of Special Appeals Brief