

Your Right to Refuse

What to Do if Your Hospital Has “Banned” VBAC

The International Cesarean Awareness Network has tracked over 300 hospitals across the U.S. that have instituted policies seeking to ban vaginal birth after cesarean (VBAC), misleading women to believe they must undergo cesarean surgery whether there is a medical need for it or not. Clinical research shows the risks of VBAC are small and that repeat cesarean surgery carries its own risks. In spite of this, many hospitals have attempted to ban VBAC in order to limit their exposure to liability. As a result, many women around the U.S. have been told they must choose unnecessary surgery or forgo hospital care altogether. Below is a guide for women in this situation. Women who are seeking to avoid other medical interventions will also find this information useful.

Q. Does my doctor or hospital have the right to force me to undergo surgery?

A. No. You have the legal right to refuse any medical treatment, including cesarean surgery. VBAC “bans” exist only because they have not been challenged by patients. The doctrine of informed refusal is upheld by common law, case law, Constitutional law, federal law, state law, state mandated medical ethics and the ethical guidelines of the American Medical Association (AMA) and the American College of Obstetricians and Gynecologists (ACOG). Any facility or care provider claiming that you must undergo a cesarean you wish to refuse is violating the governing principles of their respective institutions and professions, as well as the rule of law.

Q: What can I do to protect myself from being forced into surgery?

A: There are multiple steps you can take to protect yourself:

- **Know your rights.** Visit www.birthpolicy.org to learn more about the illegal and unethical status VBAC “bans.”

- **File a grievance with the Chief Compliance Officer at the hospital where you plan to give birth.**

Hospitals that attempt to ban VBAC are in violation of the Center for Medicare and Medicaid Services (CMS) Conditions of Participation (CoP), which require all federally funded hospitals (approximately 80%) to honor the rights of patients to be informed of the risks, benefits, and alternatives of all procedures, to refuse any proposed treatment, including cesarean surgery, and to participate in all treatment decisions. To hold your hospital accountable under these regulations, you must first file a complaint with the hospital’s Chief Compliance Officer, who is required to issue a ruling within 60 days. If the CCO rules against you, then you have the right, first, to appeal to the your state CMS office and then to Office of the Inspector General’s Office at the Department of Health and Human Services. If HHS rules against you, then your appeal goes to the Department of Justice, which is authorized to bring litigation against the hospital on your behalf. You can read the CoP regulations by going to the Code of Federal Regulation’s main page at <http://www.gpoaccess.gov/cfr/index.html>. Enter “42CFR482.13” into the search engine, which will bring up all of the CoP regulations on patient rights and filing grievances. To find contact information for your state CMS office, go to <http://www.medlaw.com/healthlaw/EMTALA/reporting/where-to-report-violation.shtml>

- **Replace your birth plan with a customized form documenting your refusal to consent.**

By law, you are not required to sign the hospital’s consent form. You can either customize the hospital’s form or write down your refusal to consent to treatment on any piece of paper and sign it. Put a line through any listed procedure you want to decline and then add the list of routine procedures, including cesarean surgery, you want to refuse, initial each change or addition and make sure you have all the required signatures. Doing so will legally document your refusal to consent and alert staff that you understand and are prepared to protect your rights. In addition, such a document will require staff to obtain direct, verbal consent from you each time they want to do a procedure you’ve already declined in writing. If possible, pre-register at the hospital no sooner than thirty days before your due date and take the forms home with you to review, add to, and sign. Be sure to keep personal copies of any forms you sign and ask your partner or doula to record any changes that were made during the course of your labor.

Q. What if the hospital refuses to admit me unless I consent to a cesarean?

A: The federal Emergency Medical Treatment and Active Labor Act (EMTALA) requires hospitals to admit women in active labor and to abide by their treatment decisions until after the baby and placenta are delivered. The act was originally designed to prevent hospitals from “dumping” patients who couldn’t pay but has since been widely used to hold hospitals accountable for violating other patient rights, including the right to refuse treatment. If your hospital threatens to perform a cesarean despite your refusal, notify them that they are in violation of your rights under EMTALA and that you plan to file a complaint. To find out where to report an EMTALA violation, go to <http://www.medlaw.com/healthlaw/EMTALA/reporting/where-to-report-violation.shtml>

Q: What happens if my care provider ignores my refusal to consent and performs a cesarean anyway?

A: Many women have been threatened by their care providers that they would be put under general anesthesia and sectioned if they sought care in the hospital, even if they were close to delivering the baby naturally. While these threats

are intimidating, they are not supported in either legal or ethical guidelines. If your care provider performs surgery in spite of your refusal, **you are within your legal right to file criminal assault and battery charges and, if you or your baby suffer an injury, you may also sue for negligence.**

Q: What if I challenge my care provider and he or she decides to drop me from care?

A: Professional ethical guidelines state that a physician may only drop you from his care after giving you 30 days notice. This means that if you are within 30 days of your likely delivery date, your care provider cannot terminate your care. In addition, if you are pregnant and are outside of that 30 day time frame, your provider must give you a referral and ensure you are transferred to a specific provider. **Physicians who fail to meet these guidelines may be charged with patient abandonment**, which is grounds for malpractice and constitutes a violation of ethical conduct that could result in loss of licensure.

Q: What if my care provider or hospital seeks a court order to perform a cesarean?

A: While there is always the possibility that the local court could grant an order forcing you to undergo a cesarean, these cases have become very rare in the aftermath of several court rulings declaring that such orders violate the rights of pregnant women. As a result of these rulings, both the AMA and ACOG have revised their ethical guidelines to state that court-ordered cesareans are rarely, if ever, justified, and are most definitely not justified in instances where the proposed treatment poses any risks to the mother.

Q: I want to give birth in a hospital, but I am afraid that this is too much stress on my pregnancy and my family.

A: Unfortunately, the options for women whose hospitals have attempted to ban VBAC are limited. Your choices are to fight and assert your legal rights, submit to surgery, or opt for homebirth, either unassisted or attended by a midwife. Educate yourself about the benefits and risks of each option, and make the decision that is best for you and your baby. Call your local ICAN chapter (www.ican-online.org) for more information on your options and on the resources available to facilitate your decision.

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