der common law, treating a patient without his or her consent constitutes battery, whereas treating a patient on the basis of inadequately informed consent constitutes negligence." Since a newborn cannot give consent, does neonatal circumcision constitute battery? Does the incomplete consent process in neonatal circumcision constitute negligence?

Respect for a patient's autonomy must apply to the weakest among us; otherwise, no one's autonomy can be assured.

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[Three of the authors respond:]

A neonate is incapable of providing consent. As we state in our article, incapacity is not an exception to the requirement for consent, and substitute consent should be sought. If circumcision were performed without substitute consent, this would constitute battery.

In most cases, substitute consent is provided by the neonate's parents. Dr. Howe states that "parental permission is acceptable only in situations in which medical intervention is clearly and immediately necessary." He cites the Committee on Bioethics of the American Academy of Pediatrics, which also suggests that "the pediatrician's responsibilities to his or her patient exist independent of parental desires or proxy consent," and that providers of care to neonates "have ethical and legal duties to their child patients to render competent medical care based on what the patient needs, not what someone else expresses."[1]

These statements suggest that the authority to provide substitute consent for a neonate lies with the clinician rather than the parents. However, this view is inconsistent with existing Canadian legal, ethical and professional standards. The authority to provide substitute consent lies with the parents. Some limits to parental authority have been established through law or professional policy. For example, the Supreme Court of Canada has ruled that parents may not subject their children to nontherapeutic sterilization,[2] and the College of Physicians and Surgeons of Ontario, in its policy on female circumcision, excision and infibulation, states that "the performance of any of these procedures by a physician who is licensed in Ontario will be regarded as professional misconduct."[3] However, there are no established limits to parental authority in regard to consent to male circumcision. The Fetus and Newborn Committee of the Canadian Paediatric Society has recommended that circumcision of male newborns not be routine but that the decision be made based on the social rather than the medical concerns of the parents.[4]

Howe cites a study that showed that parents were unaware of all of the risks and benefits of circumcision. The same study found that most parents did not want to be informed of all of the risks and benefits "and often seemed to resent the physician for presenting [the risks and benefits] to them. In this case, a desire to have a partial disclosure of the medical complications may be a result of the social, traditional, or religious considerations that motivate the request for [circumcision]."[5] On the basis of these observations, it is difficult to conclude that failure to disclose all known risks is negligent.

We suggest that clinicians provide parents with adequate information about the risks, benefits and alternatives that a reasonable person in the parents' position would need to know to make a decision. A nonjudgemental inquiry into the parents' reasons for circumcision may be useful. If the parents' decision is based on strong cultural beliefs and practices, a detailed, impersonal disclosure of all known risks and benefits would probably not be relevant or helpful. However, if the decision is based on personal experience (e.g., the father was circumcised), a detailed discussion of the risks and benefits may be useful in helping the parents come to a decision.

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