

## Case study: Coerced consent

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“Coercion is commonly said to invalidate consent, and that is always true if the source of the coercion is the physician. However, if it is a family member who coerces the patient to consent, the resultant consent may be quite valid and treatment should proceed.” However, there must be clear evidence of mental incompetence. Consider the following case.

Caroline Mace, RN,\* had never run into a situation quite like this one. Minnie Jones\*, a 76-year-old white female, presented with severe hip pain after a fall in a shopping mall. Alert and oriented, she cooperated fully in all diagnostic tests and care while in the emergency department (ED). However, when the physician told her the diagnosis—fractured hip—she refused to allow further treatment and demanded she be allowed to die with dignity. After attempting to persuade for the better part of an hour, the ED physician called her oldest son for permission to treat her. The son was out of the country, but after a discussion with the physician, he gave permission for treatment.

Caroline was told to give Mrs. Jones her preoperative medication. Flanked by a big orderly, she told Mrs. Jones her physician had ordered a sedative to be given to her before surgery. Mrs. Jones replied, “I don’t want to go to surgery. I’ve heard all about how many people die from broken hips and I’ve decided it’s my time! The doctor said my son gave his permission, but my son has no right to speak for me. I said no, and I mean no. Leave me alone, and let me die in peace!” When Caroline threatened to have the orderly physically restrain her, Mrs. Jones “consented” to the injection.

Once Mrs. Jones dozed off, the nurse sent her to the operating room without a signed operative permit, but with notations that her son had been contacted and had given verbal permission for the surgery. Mrs. Jones made it through surgery with flying colors, but developed pneumonia postoperatively and was put on a ventilator. She didn’t respond to various antibiotics and became disoriented. Her son returned from vacation to find his mother in the intensive care unit with a poor prognosis. Angry and threatening to sue, he said he never would have consented to surgery if he’d known about the complications.

### Commentary

Frankly, I’m both mystified and appalled by the handling of this situation. If the consent process had been honored, the entire situation could have been avoided. Now it’s rife with questionable ethical behavior by many parties: the physician for failing to explain the surgery and enlisting the son’s cooperation in coercing the patient into surgery; the orthopedic surgeon (for certainly there had to be one) for performing the surgery with nothing but an absentee son’s verbal permission; the nurse for threatening Mrs. Jones, medicating her coercively, and failing to report the situation up the line; the son for failing to advocate for his mother and for helping to coerce her—and then threatening to exploit the situation for money. Finally, I fault the hospital for failing to act to protect the patient and for allowing its agents to abuse and coerce her.

1. The patient didn’t understand her condition and the likely results of receiving treatment vs not receiving it. Mrs. Jones didn’t realize a broken hip isn’t a terminal condition; there is no indication that anyone explained this to her adequately. She wasn’t in imminent danger of dying, and refusing treatment would be more likely to leave her bedridden and in pain rather than dead. Someone—a physician, surgeon, chaplain, nurse, ombudsman, or family member—needed to make that clear. No one did.
2. The physician’s decision to circumvent the patient’s decision by calling her adult son and acting on his verbal consent—in the absence of both an imminent life-threatening emergency or a judicial determination of the patient’s incompetence—is troubling, particularly in light of what appears to be her articulate refusal of treatment. Refusing treatment is not in itself proof of incompetence.
3. The nurse’s complicity and willingness to use force are puzzling. Why not contact a supervisor, write an incident report when the patient refused her preoperative medication, or ask for an ethics committee review of this case rather than threaten to have an orderly hold the patient down while she forcibly medicated her?
4. The son failed to advocate for his mother. Although at first he was willing to override his mother’s wishes, he reversed his position after she suffered complications. Then he threatened to exploit the situation for money.
5. The hospital failed to enforce its own policies and placed itself in legal and regulatory jeopardy. This failure could violate the Center for Medicare and Medicaid Service’s (CMS) Conditions for Participation, placing the hospital’s accreditation in jeopardy. Also, the hospital could be sued for failing to protect the patient’s right to self-determination and bodily integrity.

That’s what I think. What do you think?

(\*Names have been changed to protect confidentiality.)

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