

Truman And Kokemoor Case

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Case 1: Truman v. Thomas

The Truman v. Thomas case was established on the surgeon's failure to reveal the risks of disallowing a diagnostic test to the patient to help her make an informed decision. The patient ultimately died from cancer of the cervix. The respondent, Dr. Claude Thomas, was a family physician for Rena Truman from 1963 to 1969; during that time, he offered her medical advice. In 1969, Mrs. Truman was diagnosed with cancer of the cervix by Dr. Ritter, who was recommended to her by her urologist, Dr. Casey. By then, the cancer was too advanced to be treated successfully and resulted in the death of Mrs. Truman in 1970. The Appellants of this case were two minor children who filed an action for medical malpractice, contending that the appellee violated his duty by failing to educate their mother of the material risks of rejecting a pap smear. The initial instructions were rejected by the trial court, and the jury regarded the appellee as not negligent, resulting in the appellants seeking review.

The appeal was made on the grounds of three important points; first was the trial court's refusal to impeach Dr. Thomas's testimony through his criminal record and with proof of prior deliberate falsehood; moreover, the trial court rejected the instruction on the principle of knowledgeable consent; and lastly, the trial court did not instruct the jury on the Helling v. Carey doctrine. The central issue for the California Court of Appeal was whether Dr. Thomson breached his obligation by failing to inform Mrs. Truman of the lethal consequences of rejecting a pap smear, thereby allowing cancer to develop undetected. The Appeal Court, however, rejected the basis of an appeal made by the appellants and affirmed the decision made by the trial court (Truman v. Thomas, 1980).

Case 2: Johnson v. Kokemoor

The plaintiff, Donna Johnson, was a patient suffering from unremitting headaches. A CT scan was carried out to determine the cause of her headaches, and Johnson was referred to the defendant, a neurologist, Dr Richard Kokemoor. She was diagnosed with an enlarged aneurysm, which was located in the rear area of her brain. Although the aneurysm was not the source of her persistent headaches, the physician suggested the basilar bifurcation aneurysm surgery to clip it. This surgery is regarded as one of the most difficult procedures in neurosurgery; however, Kokemoor informed the patient that he had successfully attempted the surgery "dozens of times" and that it is very similar to tonsillectomy or gall bladder surgery. The patient was informed of a 2 per cent risk of serious impairment, which is approximately 30 per cent when undertaken by an inexperienced surgeon. Moreover, the plaintiff was not informed of the availability of more experienced surgeons for this procedure. Johnson agreed to that procedure, which resulted in quadriplegia, speech and vision

impairment, and the patient becoming wheelchair-bound.

At trial, the respondent attested that he adequately informed the complainant about the risks involved and disclosed relevant information. The claims were backed by expert witnesses. The jury decided in favour of Johnson. However, Kokemoor appealed, putting forth the argument that the trial court had blundered in the admission of physician-specific evidence related to Kokemoor's failure to accurately compare the mortality and morbidity rate of skilled and inexperienced surgeons, a failure to apprise Johnson of his inexperience in performing the procedure and, a failure to recommend her to more proficient surgeons. The court of appeals regarded the first two issues as acceptable, but the third was not relevant to informed consent. The Court of Appeal directed a new trial, which Johnson appealed (Johnson v. Kokemoor, 1996).

Truman & Kokemoor – The Law Established in Canterbury

The Canterbury v. Spence case sought damages resulting from failure to disclose the risks involved in performing a procedure and negligent post-operative care. Complaints filed to charge an oversight on the part of physicians to disclose adequate information about risks and alternative procedures are centuries old. The primary position outlined in American law is that every adult individual in the right state of mind has the right to make decisions about what is done to his/ her body. This entails that consent should be an informed exercise of choice; therefore, the chance to appraise the options available and the risks involved in each is imperative for a knowledgeable decision. As an average individual has limited and, in some cases, no medical understanding, they ordinarily rely on their physicians as the primary source of enlightenment to guide them to an informed decision. This requires the physician to divulge reasonable information about the various options and risks.

This case demonstrated the physician's obligation to communicate information, especially when it is required for reasonable care. The physician must perceive the bodily abnormalities and warn the patients of any threats posed to their well-being by the proposed therapy. The case further established that the need for reasonable revelation is not merely a necessity. Rather, healthcare professionals must warn the patient of any dangers related to the proposed treatment. This entails that the disclosed information must be "material" to the decision made by the patient. According to the "Federal Court of Appeals for the District of Columbia", any information related to risk is considered material when a rational individual, "in what the physician knows or should know to be the patient's position", is likely to ascribe significance to the "risk or cluster of risks" while deciding to adopt or reject the proposed course of treatment. In the above-mentioned cases of Truman v. Thomas and Johnson v. Kokemoor, the patient, Mrs Truman, died because the physician failed to communicate the rejection of the pap smear, and Johnson suffered quadriplegia as the physician failed to accurately disclose the risks associated with the procedure and offer advice on alternate measures. The disclosure of this information was central to the decision made and, therefore, demanded

communication. In both cases, it was imperative that the intrinsic as well as the probable hazards of a suggested procedure, the alternative methods or treatments, if any, along with the likely risks that may befall the patient if one decides to remain untreated, were communicated to the patients to enable them to make an educated judgment (Canterbury v. Spence, 1972).

Truman & Kokemoor – “The Belmont Report”

“The Belmont Report” summarizes the ethical principles for research. It relates to the issues of biomedical research and seeks to protect human subjects. The basic ethical principles outlined are related to respect for individuals as autonomous beings, beneficence, and justice.

The above-mentioned cases of Truman & Kokemoor can be evaluated in light of these three ethical principles. The first principle, i.e. respect for persons, entails two moral beliefs: first, the individuals must be treated as self-sufficient beings; second, the individuals with compromised autonomy have a right to be protected. This view that individuals are autonomous agents capable of deliberation and making choices further states that denying individuals their freedom, withholding information that is central to making an intelligent judgment, and rejecting a person’s decision are ways that disrespect them. As it is imperative in research that participants have complete information and willingly become a part of it, the same should apply to medical procedures where the importance of divulging adequate information about procedures and the potential risks is even higher.

The principle of beneficence outlines the rule that individuals must be treated in an ethical way that not only respects their decision and protects them from damage but also extra efforts are made to ensure their well-being. The two rules are that they do no harm, minimize the risk of possible harm, and maximize probable benefits. The third principle of justice in research raises the issue of who receives the benefits and who bears the burdens. Denying benefits that a person is entitled to or imposing an undue burden upon a person is often termed as injustice.

The Truman and Kokemoor cases not only disregard the first ethical principle as the physician disrespected the individual autonomies by withholding information pertinent to a deliberate judgment, but it also harmed the patients. The philosophy of minimizing risk and maximizing benefits does not apply as Kokemoor misquoted his experience with such surgeries and also misinformed the patient of the risk as 2 per cent, which in reality was somewhere around 30 per cent. The actions of the physician in both cases brought harm to the patients and caused injustice as the patients and their families had to bear the undue burden. The application of these principles requires informed consent and an assessment of potential risks and benefits; however, neither Mrs. Truman nor Johnson was presented with complete and accurate facts to evaluate the decision (Department of Health, Education, and Welfare, 1979).

“The Informed Consent Doctrine”

The concept of physicians obtaining consent from patients before performing any procedure or administering a treatment became ingrained in law in 1914 when Judge Cardozo stated the right of every adult individual of sound mind to determine what is done to his/ her body. He further elaborated that a surgeon who performs a non-consensual procedure is, in reality, committing assault, thereby being liable for damages. However, this raised an issue of the validity of consent, as the courts deemed consent invalid unless the patient was completely aware of the extent of the procedure. The informed consent doctrine was established as a result of the *Zotere v Repp* case, where the court instructed that the patient’s consent must entail a thorough understanding and knowledge of the treatment or procedure itself.

The implications of the court’s decision in the case of *Truman v. Thomas*, in which the physician failed to update the patient on the risks involved in rejecting a pap smear, resulting in subsequent death, is evident through the California Supreme Court decision. It deemed the trial court’s refusal to instruct the jury as erroneous about the duty of a physician to divulge all related information for the patient to guide them towards a deliberate judgment about submitting to or forgoing a diagnostic procedure. This led to the creation of a new doctrine of informed dissent whereby physicians are obligated to advise the patients about the perils of declining a diagnostic test.

In the *Johnson v. Kokemoor* case, the jury established that the physician failed to inform the patient about the risks involved in her surgery, thereby failing to achieve informed consent. The jury also established that a rational person would have refused the procedure if the complete and accurate facts were presented to ensure a correct evaluation of risks and advantages. Although the defendant rejected the argument that the physician must disclose personal information about his experience relating to the said procedure, in this case, the court held that it may be a legal responsibility of the physician to disclose accurate information about the level of experience in conducting a procedure especially when such information is sought by the patient or may influence the informed decision (O’Neil, 1981)

References

Canterbury v. Spence, 464 F.2d 772, 787 (D.C. Cir. 1972), cert. denied, 409 U.S. 1064 (1972)

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Truman v. Thomas (1980) 27 Cal.3d 285, 291 [165 Cal.Rptr. 308, 611 P.2d 902]