

Miranda health care rights

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For the past two years, Congress has struggled over the substance of a *Patient's Bill of Rights*. The recent U.S. Supreme Court *Dickerson* decision that upheld the constitutionality of the Miranda warnings may be the inspiration Congress needs to settle the Patient's Bill of Rights debate as well.

We are all familiar with the Miranda warnings, to the point that they have become, in the words of the court, "part of our national culture." It would be easy to modify this language to create a simple yet powerful set of patient's rights. Consider:

You have the right to a physician. If you cannot afford one, one will be provided for you.

You have the right to refuse treatment. But if you waive this right, any treatment you do not refuse may be used upon you.

This *Patient's Bill of Rights* does not get mired in petty legalisms such as ERISA exemptions to sue HMOs, or in valid but trifling medical issues, such as the appropriate length of stay following a cesarian delivery. Rather it addresses fundamental rights; and, through the expression of these rights, will lead to better medicine as well.

Lets look at the two clauses in turn. "You have the right to a physician"—not only to medical care, but to a *physician*—a person with whom a patient can have a relationship and who will take an interest in a patient's overall health. Thus this right goes beyond the acknowledged (but underfunded) mandate for health systems to provide emergency medical care, and establishes that our rich country guarantees all citizens basic, necessary care, even before they are gravely ill.

WHEN WILL COVERAGE FOR THE 47 MILLION UNINSURED IN THE UNITED STATES COME TO PASS?

Let's not be subtle about this. To have any teeth, this right will require some variant of a national program for primary care medical coverage. Of course there will be objections. No modern day Marie Antoinette is going to come out and say "Let the poor eat aspirin" if they cannot afford a doctor. But

some will argue that this right is redundant—citing, for example, the open-door policy in the nation's emergency rooms—and others will complain that the cost will bankrupt the system, thus leading to less care for everyone.

The response to both complaints revolves around the same theme: society already provides care to people without medical coverage. But this is expensive and less effective *re-active* care. For example, the uninsured patient is not left in the street to die in a diabetic coma or from a stroke caused by high blood pressure. But such patients often are denied preventive measures such as blood sugar monitoring or blood pressure control. Such simple measures avoid complications and the cost associated with them.

Purists will say that the right to a physician is really not a "right" in the formal sense of the word; it is a social benefit. And they would be correct because a true "right," in the classic form of the Bill of Rights of the U.S. Constitution, is a negative one; a facet of freedom to be left alone. This right to be left alone, too, belongs in the health care arena, and is embodied in the second half of the health care Miranda warning: "You have the right to refuse treatment. But if you waive this right, any treatment you do not refuse may be used upon you."

The right to refuse treatment exists today, without any health care Miranda bill, to be sure. But, like the right to avoid self incrimination protected by the original Miranda (which also existed before the warning), it is not exercised universally. In the current medical milieu, many patients are not fully informed about their choices and thus cannot make an informed decision to refuse care.

American medicine is set up to be an ever-growing enterprise. For the most part, providers are rewarded not for the quality of care provided, but for the quantity. There is a cultural imperative as well: doctors are groomed to wage war against disease. We are taught to fight until every pathological cell, every microbe—maybe even every gene that thinks of causing trouble—is beaten, even if we lose the war winning these battles. Every innovation is portrayed as triumphant progress. This creates the easy but incorrect assumption that more is better. This hurts patients and wastes money.

Patients need to be made aware of the limitations of medicine. The goal is not to scare patients into declining necessary treatment. Rather, this Miranda right asks physicians to inform patients of the consequences of not seeking aggressive treatment (an approach that, of course, does not necessarily lead to a worse outcome); and to ensure that they understand the likely outcomes from the possible treatments. Also, this right demands that doctors state whether their recommendation is based on evidence-based medicine. Many patients have no idea that numerous medical treatments currently in use and most surgical procedures have not had their efficacy proven in clinical trials.

WANTED: TRUE PARTNERSHIPS OF PHYSICIANS AND PATIENTS IN THE PLAN FOR DIAGNOSIS AND THERAPY

In agreeing to the last phrase of Miranda Health Care Rights, the patient indicates that he or she has become a partner in this therapeutic plan. If it has been well planned and prospectively approved, there will be minimal room for aggrieved lawsuits if the treatment doesn't work.

Putting such Miranda Health Care Rights in place is no easy task; look no further than the health care reform debacles of the 1990s. But we can look to the original Miranda for inspiration. When the Supreme Court decided *Miranda* years ago, the initial response by the law enforcement community was negative. This rule, they predicted, would no doubt obstruct law enforcement. Over time, however, police and district attorneys have come to realize that Miranda offered reliability within the system. If those magic words are said, confessions become admissible in court. A Miranda approach to the Patient's Bill of Rights may seem cumbersome and costly. Nevertheless, because such a bill provides for the availability of preventive care and frees patients to receive only what they truly want, these rights promote cost effective medicine. There is a philosophical side as well. Miranda has become a pithy statement of our country's respect for the rights of the accused, and for due process. That—and not its help or hindrance for district attorneys—is why its bipartisan support endures. Similarly, it is hoped, by expressing these unarguably decent principles in health care that could be posted in doctors' offices or distributed as a printed statement to patients admitted to the hospital, this Patients' Bill of Rights could indeed become part of our national culture as well.

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As reasonably well informed (and presumably

insured) medical consumers, readers of *The Pharos* already enjoy these rights. Isn't it time that all Americans be given a chance to share in them?

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