Duty of care, best interests and patient refusal of treatment

The GMC guidance Good Medical Practice lists the duties of a doctor. These are:

- Make the care of your patient your first concern
- Protect and promote the health of patients and the public
- Provide a good standard of practice and care
- Treat patients as individuals and respect their dignity
- Work in partnership with patients
- Be honest and open and act with integrity

Thus a doctor should have the knowledge and skills to provide appropriate treatment for a patient and to advise a patient about treatment options, and should work with a patient to identify the best treatment option for that patient, respecting the patient’s right to make a decision that does not necessarily fit with the doctor’s assessment of what would be the best treatment for the patient. A competent patient can refuse any treatment, even a life sustaining treatment, and her doctor must respect her decision. Refusal of a treatment by the patient does not negate the duty of care that the doctor has to that patient. Therefore the above duties and the principles informing them, still apply. If an informed patient refuses what you as a doctor consider the best treatment option you should work with the patient to identify the most appropriate treatment option that is acceptable to the patient and that will minimise any harm to the patient. A doctor may refuse to provide a treatment that the doctor considers is not in the patient’s best interests but this does not mean refusing any treatment option that the doctor does not consider the ‘best option’. If the treatment option requested by the patient is a recognised treatment/management option and is less harmful than providing no treatment then a doctor would be expected to provide it, making the care of their patient their first concern. Thus in the context of ante natal care, if a pregnant woman refuses an elective caesarian section, or any hospital based intervention, there is still a duty on the part of the doctors, and other health professionals caring for her, to provide the best care they can for her within the limits of her consent.

In the ante natal context the doctor also has a duty to protect the welfare of the child to be born where possible. This can create conflicting duties of care when the mother refuses a treatment option that the doctor considers to be in the best interests of the baby. The legal position (in English law) is clear that a mother cannot be treated without her consent even if her refusal puts her unborn child at risk. The right of the mother to make her own decision outweighs any interest that the foetus has in not being harmed. In this situation a doctor or midwife should do whatever they can to minimise the harm to the foetus (for example ensuring appropriate resources are available to care for the infant on delivery) while respecting the mother’s right of self determination.
There seems on the face of it a discrepancy between the law’s protection of a woman’s right to refuse a treatment such as caesarian section even if it endangers the life of her foetus but places strict limits on a woman’s right to termination in the third trimester of pregnancy. There are two possible ethical arguments that could support this distinction.

1. Enforcing a caesarian section involves an infringement of the woman’s bodily integrity, in legal terms an assault or battery. This is a significant harm to the woman, which is not the case in a termination of pregnancy where the woman has consented to the procedure.

2. Performing a termination of pregnancy is an act whereas not performing a caesarian section is an omission. There is a body of ethical and legal literature on the distinction between an act and an omission, mainly in the context of end of life decision making, which argues that an omission that results in a foreseeable harm is not as morally bad as an action which results in the same harm.