



Ethics

Consent¹

Presented by

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Introduction

Patients are entitled to make decisions about their medical care and to be given relevant information on which to base such decisions. The physician's obligation to obtain the patient's consent to treatment is grounded in the ethical principles of patient autonomy and respect for persons and is affirmed by medical syndicate, councils and professional policy. A large body of research supports the view that the process of obtaining consent can improve patient satisfaction and compliance and, ultimately, health outcomes. An exception to the requirement to obtain consent is the emergency treatment of incapable persons, provided there is no reason to believe that the treatment would be contrary to the person's wishes if he or she were capable.

What is consent?

Consent is the "autonomous authorization of a medical intervention by individual patients."⁽¹⁾ Patients are entitled to make decisions about their medical care and have the right to be given all available information relevant to such decisions. Obtaining consent is not a discrete event; rather, it is a process that should occur throughout the relationship between clinician and patient.⁽²⁾ Although the term "consent" implies acceptance of treatment, the concept of consent applies equally to refusal of treatment. Patients have the right to refuse treatment and to be given all available information relevant to the refusal. Consent has three components: disclosure, capacity and voluntariness. "Disclosure" refers to the provision of relevant information by the clinician and its comprehension by the patient. "Capacity" refers to the patient's ability to understand the relevant information and to appreciate those consequences of his or her decision that might reasonably be foreseen. "Voluntariness" refers to the patient's right to come to a decision freely, without force, coercion or manipulation.

Consent may be explicit or implied.⁽³⁾ Explicit consent can be given orally or in writing. Consent is implied when the patient indicates a willingness to undergo a certain procedure or treatment by his or her behavior. For example, consent for venipuncture is implied by the action of rolling up one's sleeve and presenting one's arm. For treatments that entail risk or involve more than mild discomfort, explicit rather than implied consent should be obtained.

Signed consent forms document but cannot replace the consent process. There are no fixed rules as to when a signed consent form is required. Some hospitals require that a consent form be signed by the patient for surgical procedures but not for certain equally risky interventions. If a signed consent form is not required, and the treatment carries risk, clinicians should seriously consider writing a note in the patient's chart to document that the consent process has occurred.

1. Summarized from: Etchells E, Sharpe G, Walsh P, Williams J, Singer P. CMAJ. 1996;155:177-180.

Why is consent important?

The notion of consent is grounded in the ethical principles of patient autonomy and respect for persons. "Autonomy" refers to the patient's right to make free decisions about his or her health care. Respect for persons requires that health care professionals refrain from carrying out unwanted interventions and that they foster patients' control over their own lives.

Obtaining the patient's consent to medical care is a legal requirement. Under common law, treating a patient without his or her consent constitutes battery,⁽⁴⁾ whereas treating a patient on the basis of inadequately informed consent constitutes negligence.⁽⁵⁾ The requirement to obtain patient consent is affirmed by most of all professional organizations, obtaining valid consent before carrying out medical, therapeutic and diagnostic procedures has long been recognized as an elementary step in fulfilling the doctor's obligations to the patient.⁽⁶⁾

Several meta-analyses and reviews have suggested that the process of obtaining consent can be an important component of a successful physician-patient relationship. One review found that effective physician-patient communication improved emotional health, symptom resolution, level of function, results of physiologic measures and pain control.⁽⁷⁾ A meta-analysis showed that providing information about what the patient would feel and what would be done in the course of stressful and painful medical procedures consistently reduced negative feelings, pain and distress.⁽⁸⁾ Another demonstrated that information-giving by physicians was associated with small to moderate increases in patient satisfaction and compliance with treatment.⁽⁹⁾

How should I approach the consent process in practice?

Clinicians often struggle with the question of how to apply the ethical and legal concept of consent in their daily practice. It is helpful to distinguish the process of problem solving from that of decision making.⁽¹⁰⁾ Problem solving involves identifying the patient's presenting problem and developing a list of treatment options. Most patients expect the physician to assume the role of problem solver.^(11,12) Decision making involves choosing from the treatment options. Several studies have shown that patients' desire for decision-making responsibility is variable.⁽¹³⁻²⁰⁾ Even patients who actively seek information do not necessarily wish to make the decision about which treatment option to follow.^(21,22) Some, particularly those who are elderly or acutely ill, are predisposed to follow the physician's recommendation.⁽²³⁻²⁵⁾

Obtaining valid consent requires that patients participate in problem solving as much as they wish. Patients should be free to ask questions and receive answers about treatment options not discussed by the clinician. The consent process also requires that patients actively participate in decision making and authorize the decision. Even if the patient is predisposed to follow the clinician's recommendation, the clinician should actively engage the patient in the consent process.

Common law recognizes that the emergency treatment of incapable persons is an exception to the requirement for consent. In common law, an emergency exists when immediate treatment is required in order to save the life or preserve the health of the patient.⁽²⁶⁾ The rationale for this exception is that a reasonable person would consent to the treatment, and that a delay in treatment would lead to death or serious harm. In some provinces an emergency may be defined differently in statutory law than in common law, and so clinicians should be aware of the legislation in their own province. An emergency exists if a person is apparently experiencing severe suffering or is at risk, if the treatment is not administered promptly, of sustaining serious bodily harm.⁽²⁷⁾

The emergency exception to the requirement to obtain consent has important limitations in particular regions. Clinicians should not administer emergency treatment without consent if they have reason to believe that the patient would refuse such treatment if he or she were capable. i.e. the physician gave a blood transfusion to a patient who, because of shock and severe facial injuries, was unconscious. The patient carried a signed card indicating that she was a Jehovah's Witness who did not want to receive blood transfusions under any circumstances. Despite this information, blood transfusions were given. Although the transfusions probably saved the patient's life, the court found the clinician liable for battery, holding that the written instructions were "clear, precise and unequivocal"⁽²⁸⁾ and that the clinician was bound by them unless he had good reason to believe that they did not truly represent the patient's wishes.⁽²⁸⁾

A patient's incapacity does not exempt the physician from the requirement to obtain consent. If a patient is mentally incapable of making medical decisions, the clinician must obtain consent from a substitute.

There are other potential exceptions to the requirement to obtain consent. "Therapeutic privilege" refers to the physician's withholding of certain information in the consent process in the belief that disclosure of this information would harm or cause suffering to the patient.⁽²⁹⁾

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