

Consent in Dental Practice: A literature review

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Abstract

Ethics in health care profession in India is still in early stages and getting importance in recent years. The current medical literatures acknowledge and support that medical ethics is valuable as it upholds individual autonomy. Regrettably there are many distinct interpretations of individual autonomy and their ethical importance. The dental practitioner should obtain consent more solemnly as it provides assurance to the patients that they are neither deceived nor coerced. The consent should provide patients and others control over the volume of information that they acquire prior to any dental treatments and there is scope to repeal after proper decision.

Keywords: Consent, Informed consent, types of consent.

Introduction

The concept of consent

The consent is a part of ethics and has been gradually evolving since post world war era. In the Indian context, consent was practically nonexistent till the Consumer

Protection Act was made applicable to the medical and dental professions. Now, both doctors and patients are becoming more aware about this concept of consent, and patients are better informed of their rights. The consent in health care consists of three essential characteristics namely competence, voluntariness and knowledge. Competence is ability of patient to understand the nature of the treatment and undergoing or refusing the treatment. Voluntariness is patient has freely agreeing to the treatment without any compulsion or force. Knowledge is comprehensible information presented to the patient about the nature and their consequences of the proposed and alternative treatments¹ The consent in dental treatment is mainly concern to two ethical principles namely: The Principles of Autonomy and Beneficence.

Post-World War II, with Nuremberg Code, The Declaration of Helsinki and Belmont report made obtaining voluntary consent from the human research subjects made absolutely essential and the consent should

be based on sufficient knowledge and comprehension. This is basic reflection of concept of patient autonomy in health care, which is individual's aptness to decide and respond on the basis of rational contemplation.^{2, 3, 4, 5, 6} There is moral obligation to act in the interest and benefit of the patients to care for the patient and all preventive and curative treatments performed should be done with the best interests of the patients in mind.

Different forms of consents

In order to appreciate the evolution of informed consent it is essential to have knowledge of the other types of consent which are routinely used in dental practice. They include ⁷:

Implicit consent: This is the most common type of consent, where consent occurs through the actions or conducts of the patient rather than explicitly expressed through words. Here patient indicates a willingness to undergo a certain procedure by his or her behavior. For example, consent for an oral examination or screening is implied by the action of opening his/her mouth.

Explicit consent: In this consent the patient must express willingness for dental procedure orally or in writing. The explicit consent should be specific to particular treatment procedure. It is preferable that a disinterested third party act as witness to the consent.

Proxy consent: If a patient is unable to consent to a dental intervention because he/she is a minor or mentally unsound/unconscious/lack of intellectual maturity, the proxy consent of a legal representative/guardian is required. The Latin term *loco parentis*, meaning "in the place of a parent" refers to the legal responsibility of a person or organization to take on some of the functions and responsibilities of a parent.⁸

Blanket/broad consent: The consent signed prior to the inpatient admission, to cover many related investigations and respective procedures. It is an inappropriate form of

consent requesting permission for medical procedures, where there are no restrictions to the scope and duration of the consent, and does not inform patients adequately about investigations or procedures covered and their risks involved^{9, 10}

Informed consent is the process in which a dental practitioner/clinician provides basic information, educates patient about the risks and benefits involved, alternatives available for a particular treatment or intervention as well as fee for proposed procedures. The patient must be competent enough to make an elective decision to undergo the dental treatment or intervention after thorough explanations preferably in local language, in comprehensible, non-medical terms. Subsequent to the provision of information after understanding with legal competence, the patient is required to sign a consent form which must be accurately and unambiguously worded. Informed consent is both an ethical and legal obligation of qualified dental practitioners in India where Indian laws, consumer courts and Dental council validate patients as priority.¹¹

In a dental practice, the process of informed consent includes:

- Patients ability to make a decision
- The nature of the dental procedure,
- Explanation of information needed to make the decision
- Patients understanding of the medical information
- The risks and benefits of the procedure,
- Reasonable alternatives available,
- Risks and benefits of alternatives,
- Voluntary consent for the treatment,
- Written documentation may be general or specific.
- Preservation of records.

These components are essential elements of the shared decision-making process between patient and dental

practitioner, where both stake holders participate and decide. Most importantly, it empowers patients to make educated and informed decisions about their health and medical care.^{12, 13, 14}

Informed refusal where, the legally competent patients after understanding the information regarding dental treatment have the right to refuse essential treatment, even though the refusal will result in pain or disability. In case patient refuses to undergo essential treatment, dental practitioner should make it clear that such a refusal is at patient's own risk. An informed refusal form should be signed by the patient immediately and preferably in the presence of a disinterested third party.

Consent in Indian Laws

The dentist-patient relationship is essentially a contract and legal agreement for professional services. It implies that Individual who is legally major and mentally sound can enter into a doctor-patient contract and can give consent for dental treatment. Indian Contract Act, endorses a contract is valid only if it is free consent by the legally competent parties involved.

There are multiple interpretations for legal competent age of consent within the context of the Indian laws. The Indian Contract Act makes 18 years and above competent person to consent for contract, which is in turn validated by Indian majority act of 1875. Some interpretation of Indian Penal Code (section 89) say a child above 12 years of age can give a valid consent but many Indian laws verify and uphold age 18 years and above as legally competent age. While performing any dental procedure on a child below 18 years or legally incompetent, it is advisable to take consent from a person with parental responsibility who is the next of kin (parent/ lawful guardian) so that its validity is not questioned in future.

^{15,16, 17}

According to Indian Penal Code of 1860, Section 88 & 90; states various situations where consent could be invalidated.¹⁸

1. Consent given under fear, fraud or misrepresentation of facts,
2. Persons under the influence of alcohol or intoxicated
3. A person who is under 12 years of age. (A child >12 years can give a valid consent for physical/medical examinations only).¹⁹

The consent is dispensable under following situations 20:

1. Medical Emergencies.
2. Immigrants
3. Members of Armed Forces.
4. before imprisonment.
5. Court order or request of the police

Conclusion

It is ethical and legal obligation of all the dental practitioners to inform adequately to their patients regarding any preventive or curative dental procedures. Like other health care services, sometimes unfortunate and unforeseen mishaps happen despite practitioner's best efforts and experiences. Hence it is mandatory for all dental practitioners to obtain informed consent for every invasive and irreversible procedures as it is indeed a better tool to defend in case of any disputes arising out of dental practice. A solid specific explicit consent before dental procedure acts as evidence that can save dental practitioner from subsequent legal trials and penalties in case of any mishap. The dental practitioners should keep on updating their knowledge regarding laws, acts and regulations of central and state governments which are related to dental practice.

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