
STANDARDS OF CONSENT AND PROTECTING PATIENT AUTONOMY

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PRESENTATION OUTLINE

- Overview of PhD
- GMC 2008 Consent Guidance: Role of trust, autonomy and paternalism
- Next Steps

PHD OVERVIEW

- Examines informed consent to surgery and understandings of informed consent underpinning standards of disclosure across medical ethics, medical law and medical professional regulation.
- Different concepts of autonomy – no agreed understanding
- Exploring how each area conceptualises autonomy and how this can inform standards of disclosure.
- More than autonomy at play

GMC CONSENT GUIDANCE (2008)

- *Consent: Patients and Doctors Making Decisions Together* (2008)
- Replaced 1998 Consent Guidance. Currently under review.
- Focusing on provisions relevant to *what* information should be disclosed and *how*.
- Autonomy, paternalism and trust all feature.

INFORMED CONSENT AND TRUST (1)

- For the GMC, trust is the foundation of consent:

‘Successful relationships between doctors and patients depend on trust [...] to establish that trust you must respect patient’s autonomy [...].’

Seeking Patient’s Consent: The Ethical Considerations (1998) [1]

INFORMED CONSENT AND TRUST (2)

- 2008 Guidance: Trust remains important:

‘For a relationship between a doctor and patient to be effective, it should be a partnership based on openness, trust and good communication’

Working in partnership includes sharing information with patients to help them to make their own decisions.

Consent: Patients and Doctors Making Decisions Together (2008) [2-3]

INFORMED CONSENT AND AUTONOMY

- Not defined in 2008 Guidance.
 - Distinction between principled autonomy and individual autonomy
 - 2008 Guidance focuses on individual autonomy.
 - Faden and Beauchamp - 3 conditions:
 - (1) Understanding;
 - (2) Freedom from Controlling Influences;
 - (3) Intentionality
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INDIVIDUAL AUTONOMY: UNDERSTANDING

- ‘Share information in a way the patient can understand and, whenever possible, in a place and time when they are best able to understand and retain it.’ [18(a)]
- ‘Check whether patients have understood the information they have been given [...]’ [11]
- ‘Use clear, simple and consistent language’ [34]
- Use additional measures to ensure understanding e.g. written material, visual aids, advocates, interpreters etc. [20, 22]

Consent: Patients and Doctors Making Decisions Together (2008)

INDIVIDUAL AUTONOMY: FREEDOM FROM CONTROLLING INFLUENCES

- External sources may influence decision-making but should not control it: Faden and Beauchamp
- Safeguards to control doctor's influence.
- 'Must give patients information they want or need about' e.g. treatment options, risks, benefits [9]
- Don't make assumptions about info patients want or need [8]
- Check if more info required [11]
- Answer questions fully and honestly [12]

Consent: Patients and Doctors Making Decisions Together (2008)

PATERNALISM

- Doctors may withhold information if they believe its disclosure ‘would cause the patient serious harm’. This means ‘more than that the patient might become upset or decide to refuse treatment’. [16]

Consent: Patients and Doctors Making Decisions Together (2008)

- Meets Dworkin’s definition of paternalism but Beauchamp and Childress say ‘justified’.
- Conflicts with autonomy. Consistent with trust?

SUMMARY

- In medical professional regulation, trust, rather than autonomy is the foundation of standards governing informed consent.
- However, autonomy still features strongly, focusing upon individual values.
- Paternalism still features through the therapeutic exception. This is inconsistent with autonomy but could be seen as consistent with trust.

NEXT STEPS

- Conduct a similar review of legal standards as developed in case law.
 - Analysis of court judgements and fitness to practice decisions applying the legal and regulatory standards and analysis of concepts of autonomy, and other notions, underpinning application of the standards.
 - Bring findings together to identify common themes
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