Consent

Consent is crucial to validate any act involving two persons. A valid consent to medical procedures is an essential component for every interaction between all doctors and patients.

Consent is considered as legally valid, if the following hold true:

- The patient is legally competent, i.e., he is an adult, with a healthy mind and understanding
- Consent is given voluntarily
- The person giving consent has been well informed
- Everything told to the patient must be recorded
- Consent is patient-specific
- If a competent adult refuses to get treatment, his decision must be respected.

Consent of the patient or the legal guardian is necessary to conduct an examination. In cases labeled as medicolegal, an informed consent includes the following information:

a) the examination to be conducted is a medicolegal one and would be followed by the preparation of a medicolegal injury report,

b) all the necessary investigations required would be done, and

c) the findings of the report could go against the patient if they are not in line with the history given by the patient.

An accused arrested in a criminal offence can be examined without his consent on the police's request or on the orders of the court, if the examination is believed to provide evidence that the offence has been committed.

While examining a woman, examination by a lady doctor should be preferred. If this is not possible, a female attendant such as a nurse should be present at the time of examination.

IMPORTANCE OF CONSENT

- Consent depicts the right of a patient to make a decision regarding his medical treatment.
- Consent refers to voluntary participation of the patient in his own treatment by a physician or an institute.
- Consent is essential for all diagnostic and therapeutic procedures that are associated with risk/adverse effects or complications.
- Consent is mandatory for all medicolegal cases.

TYPES OF CONSENT

Implied Consent

Implied consent is where the behavior and the conduct of a patient suggest his consent. It implies consent to medical examination in a general sense, for instance, when a patient puts forth his arm for an intramuscular injection. This is the most common form of consent in medical practice. It is not expressed, yet legally effective. However, implied consent is generally limited to common procedures of medical examination.

Expressed Consent

Expressed consent is when a patient clearly expresses his consent to undertake diagnostic or therapeutic treatment. This may be either verbally expressed or may be expressed in writing after the patient is informed about all the aspects of the diagnostic and therapeutic procedure.

When the patient expresses consent to a specific diagnostic or therapeutic procedure verbally, it is termed as oral or verbal expressed consent. When the consent is given in writing, it is called as written expressed consent. Both these forms of expressed consent are acceptable in the court of law as proof of consent; however, written expressed consent is more valuable as it is a permanent written record. To be legally acceptable, expressed consent must agree to the doctrine of informed consent.

Blanket Consent

Blanket consent is taken on a printed form that details almost everything that a doctor or hospital might do to a patient. Blanket consent is legally inadequate for procedures that have risks and alternatives.

ELEMENTS OF INFORMED CONSENT

Disclosure of Information

The following are included in disclosure of information:

- A doctor is required to explain the exact nature of the disease to the patient.

- A doctor should explain the need for the treatment and the nature of the procedure as well as the expectation from the recommended therapeutic intervention besides the probability of success.
- The patient must be informed about the alternative forms of treatment available, with the associated benefits and anticipated adverse effects or risks and complications linked with both the proposed and alternative procedure.
- The patient has the right to choose between proposed and alternative procedure.
- The patient's right to refuse all of these procedures and the medicolegal outcomes of refusal.

Voluntary Consent

The patient's consent must be voluntary and free from any intimidation, force and misrepresentation of facts. A consent is legally valid only if it is informed and voluntary and has been taken freely and exclusively by the patient. No one else has the authority to give consent on behalf of the patient (with few exceptions).

Capacity to Decide

Capacity to decide is a significant aspect of informed consent. An individual who is able to understand the nature of the act/procedure and its probable consequences should give consent. The person giving the consent must be mature enough to understand, evaluate and estimate the risks and benefits associated with the proposed treatment. He should be able to accept the responsibility for the informed consent given to the proposed treatment. Following are the characteristics that describe a competent person:

- A person with a sound mind
- A person with proper reasoning
- One who understands the implications of his consent
- A person who is at least 12 years of age.

The informed consent is considered to be legally valid if all the aforementioned components are fulfilled.

Special Circumstances

- If the patient is a child <12 years of age, consent is taken from the parent or guardian.
- In an emergency involving a child where parents and guardians are not available, consent can be obtained from the person who is in charge of the child at that moment (*Loco Parentis*).
- Consent given for an illegal act is not valid.
- In an emergency where the patient is unconscious and unfit to give consent, emergency doctrine is applicable.
- Consent of spouse for operation and treatment in the routine course is not necessary. However, consent is required if the procedure/instrument used involves danger to life or can impair sexual functions.
- Consent of both the spouses is required in case of an operation involving reproductive and sexual organs, such as sterilization. In cases of artificial insemination donor, consent is need from both the recipient husband and wife and the donor and his wife.
- Under Medical Termination of Pregnancy Act 1972, for MTP, the consent of pregnant woman is sufficient if she is >18 year of age and has sound disposing mind. If the pregnant woman is <18 years old, unconscious or is of unsound mind, consent is taken from her parent or legal guardian.
- Any information pertaining to the nature of illness of the patient can not be disclosed to a third party without his consent except in the following situations:
  - Privileged communication.
  - Case of negligence against the doctor where he can reveal the secrets in his defense.
  - When asked by the honorable court or judge.
- Consent should be taken from the next of kin of a deceased person for performing clinicopathological autopsy. Consent is not required for medicolegal autopsy since the law of the land gives the consent.
- For cadaveric transplantation, consent is taken form the next of kin, who is in possession of the dead body.
- For publication of patient's record or data or photographs, in articles or journals, consent must be taken from them and assurance should be given that their identity will be protected.
- Written informed consent should be obtained from individuals participating in a research program/ clinical trial.

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