

Informed consent: for intervention and documentation

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Law and health care practice

“It is reasonable that a patient should be told what is about to be done to him, that he may take courage and put himself in such a situation to enable him to undergo the operation.”

Slater v Baker & Stapleton 1767, p. 362

Bolam v Friern Hospital Management Committee 1957 All ER 118

“A doctor is not negligent if he acts in accordance with the practice accepted at the time as proper by a responsible body of medical opinion even though other doctors adopt a different practice”

Upheld: Lord Scarman (*Sidaway v Governors of Bethlem hospital* (1985) AC 871

Rogers v Whitaker 1992

- Mrs. Whitaker - surgery to improve sight of one eye
- **High Court in Australia:**
 - Positive duty on the part of the health professional to provide material information
 - *Standards* of practice of health professionals *useful*, but not the *sole basis* to judge professional behaviour

1. Nature of the decision
2. Risks
3. Benefits
4. Alternatives
5. Uncertainties associated with the decision
6. Assessment of patient's understanding
7. Asking patient to express a preference

Ethical values in health care

- **Promoting well-being**

- *Respecting autonomy*

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- **Respecting privacy**

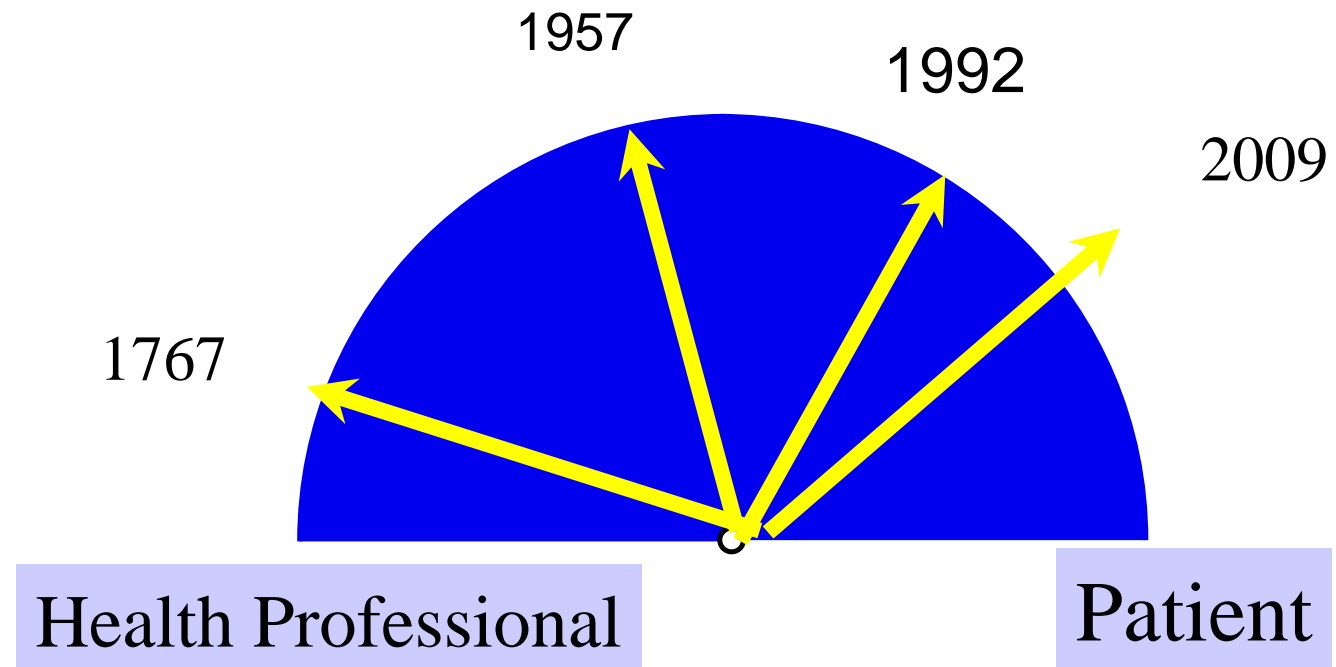
- **Fairness/justice**

- Benefits “best interests”
- Non-harm

- Informed consent
- Confidentiality

- Fair allocation of resources
- Non-discrimination

Who decides what and how much information should be given to patients?



Today

- Law and *ethics* as a tool to use in understanding and implementing informed consent in clinical practice
- Key message is that **ethics** (autonomy) is more helpful for understanding and implementing informed consent in interventions and documentation

The law of consent



1. information
(objective and subjective);
2. understanding;
3. consent;
4. competence

1. consent must be voluntary
2. consent must cover the procedure proposed
3. patients must be given adequate information to allow a decision i.e. 'informed consent'
4. patient's must have legal capacity i.e. 'sound mind' & of legal age > 18 years

The ethical toolbox



Informed consent from
an Ethics and Philosophy
background-

Respect for a patient's
autonomy means respect
for their

- **Right** to choose
- **Capacity** to choose

The ethical toolbox



Beneficence

Informed consent from an Ethics and Philosophy background-

Obtaining informed consent to ensure the patient understands what you (the HP) want to do

- **Provide enough information to inform patient of your treatment program**
- **Ensure they understand enough to comply**

Using the ethical principle of Autonomy to guide the informed consent process

Focus on the patient:

1. Respect for a patient's equal ability to reason (Kant).
2. Enquiry into the desires/happiness of the patient (Mill).
3. Concern for how choices and information fit into the patient's overall scheme/ plan/approach to life (Young).

In practice...



The law tool prompts
you to ask,

“have I complied with
my obligations?” and
“have I completed the
forms correctly?”

In practice...



The autonomy ethics tool prompts you to ask,

“what does this person want to know?”

“how much do they understand?”

“what are their long and short term plans”

In practice...



The beneficence ethics tool prompts you to ask,

“what does this person need to know?”

“do they understand enough to comply?”

Case 1

Peter Minas is a 45 year old bank executive who has early onset osteo-arthritis of his right hip. This has been getting progressively worse. He regularly visits his rheumatologist. Recently, he has been referred to an orthopaedic surgeon who suggests that he should book in for a THR.

1. How could you obtain Peter's informed consent for this proposed management?
 - How can the legal tool help?
 - How can the ethics tool help?

Case 2: Adilah

Adilah is a seventy five year old, previously independent lady, living in a unit in Balwyn...Adilah had been losing weight continuously since her admission. The speech therapist had recommended that she be given soft foods only as she had difficulty with chewing.

- How can the legal tool help?
- How can the ethics tool help?

Adilah

She had been eating very little of her meals. Despite the dietician's involvement, no weight gain was forthcoming. As the doctors felt Adilah may not be eating due to depression, they trialled antidepressants however this did not affect her mood or her weight. Thus, they concluded she was not depressed.

Adilah

Dr's view... best option to prevent Adilah losing more weight is to have a percutaneous endoscopic gastrostomy (PEG) .

They believed that without this tube, her weight loss would continue and she would eventually die.

As the speech pathologist, I was given the role of obtaining informed consent...

- How can the legal tool help?
- How can the ethics tool help?



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Informed consent in your practice?

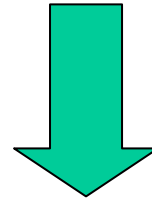
What are the features of (autonomy based) models of informed consent

1. HP formulate the goals and type of treatment and the patient give their agreement to proceed (**Wear 1998**). (**Weak**)
2. HP provide explanations of their clinical reasoning and justification for their treatment (**Brody 1989**) (**Less weak**)
3. Evidence of contributions from both the patient and therapist/dr as to treatment options and procedures (**Charles et al 1997**) (**good**)
4. Inclusion of patients' values and explicit acknowledgement of the patient's role in contributing to treatment decisions (**Lidz et al 1988**). (**very good**)
5. **An ongoing conversation between HP and their patients where HP actively provide opportunities for patients to contribute to treatment plans and decisions (Katz 1984).** (**best**)

Delany 2008

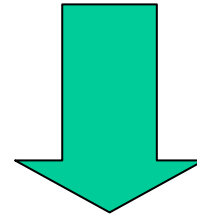
Informed Consent: Models of practice

Beneficence Model



Health professional's primary obligation is to provide medical/therapeutic benefits which may limit the nature and scope of information given to a patient

Autonomy Model



Disclosure and consent seeking are established primarily by the principle of respect for autonomy.

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