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Communication and Informed Consent in Stomatological Practice

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ABSTRACT

This article revises the evolution of the concept "informed consent" in medical and stomatological practice, insisting on the legislation that supports it: intergovernmental instruments, but also the Romanian law, including the deontological code of the dentist. The discussions carried out with the purpose of obtaining the patient's consent include the nature of the procedure and reasonable alternatives of the proposed intervention, the risks and benefits of the treatment, the cost of the interventions and, finally, the acceptance or refusal of the stomatological procedure by the patient. There are three major obstacles that prevent a good communication between the dentist and the patient: the differences of language, of culture and the alteration of communication between dentist and patient during treatment. On the other hand, the adequate quality of the information depends firstly on the rational standard of the dentist, but also on the rational standard of the patient. We insist on the attributes of the informed consent and, finally, we revise the misunderstandings and disagreements that may come up between the dentist and the patient, most of them due to the dentist's misinterpretation of some facts. It is necessary to increase the standard of the informed consent by post university training for the dentists, by increasing the patients' awareness regarding the necessity of a much more explicit consent, by accepting the educational role of the dentist.

Keywords : informed consent, constraint, informed decision, dentist-patient communication difficulties, adequate information

The informed consent is defined as the process during which a patient who is fully informed can choose the variants of his medical treatment.

From the point of view of the philosophical, psychological, medical and judicial literature the informed consent must have some compulsory components: 1) competence, 2) report, 3) understanding, 4) voluntary character and 5) consent.

THE EVOLUTION OF THE CONCEPT

The doctrine of informed consent has recently appeared in the philosophy of the medical sciences.

In *The Hippocratic Oath*, which is considered to be the moral code of practicing medicine, there is no reference regarding the patients' involvement in the process of taking decisions (1). The patient's involvement was not necessary when establishing the therapeutic plan because this code stipulates the fact that the physician knows which is the best treatment for the patient and he acts in their best interest.

In the past, medicine was not sufficiently developed and there weren't many options for the treatment that could be offered to the patient. The predominant model of medical care was based on the belief that doctors were able to rely on their own judgement when treating patients.

The concept that implies the patients' involvement in the management of their illness through being informed and taking part in the decisions on their treatment has been considered ethical only in the latest decade (2).

All the modern ethical codes sustain the importance of the principle of informed consent. This principle appeared as a consequence of the atrocities made by the German doctors and researchers during the Second World War, under Hitler. The *Nürenberg Code* resulted from the many case trials that convicted the war crimes of the Nazi doctors (3). This code begins in a simple way, with a statement that is separated from the rest "The voluntary consent of the human subjects is absolutely essential". It must be grounded on sufficient un-

derstanding and knowledge. For the next years this concept extended and now it includes the medical treatment in general (2).

The concept of "informed consent" is considered to be a transatlantic doctrine with its origin in the period of the civil rights in the 1950s – 1960s in the United States. Consequently, the law has evolved in order to support these rights; the moral right of involving the patients in the process of taking decisions being now a legal obligation of the doctors (4, 5).

The patient's consent concerning the medical procedure is stipulated in the *Declaration on the promotion of patients' rights in Europe* in 1994, as a set of principles for promoting and implementing the patients' rights in the European countries that are members of WHO (6). The following intergovernmental instruments were taken into consideration (7, 8, 9): *The Universal Declaration of Human Rights* (1948), *the International Convenant on Civil and Political Rights* (1966), *the International Convenant on economic, social and cultural rights* (1966), *the European Convention on human rights and fundamental freedoms* (1950), *the European social charter* (1961).

In our country, the patient's right to the medical report and the patient's consent concerning the medical procedure are stipulated by the *Law of the patient's rights* no. 46 from 21st January 2003 (10).

The deontological code of the dentist stipulates (art. 12 from Chapter I – General dispositions) that "For every act of diagnose and treatment, the dentist shall ask for the patient's consent. If this involves an increased risk, it is necessary to have the written consent on the document of primary evidence" (11, 12).

The doctrine of "informed consent" is grounded on the principle of the patient's autonomy and right to self-determination. Autonomy defines as the patient's ability to act and decide on the basis of rational thinking and deliberation. Autonomy can be restricted by certain factors, among which law, society, other people's autonomy, personal circumstances, like age and welfare (13).

The moral perspective of the "informed consent" needs a complete disclosure to and understanding by the patient, with the purpose of satisfying the principle of the patient's autonomy.

CONSTITUTIVE ELEMENTS

Generally (13, 14, 15), we admit that before getting the patient's consent there must be some discussions about the following elements:

The nature of the decision or procedure. More drastic treatments need a more detailed report in comparison with the less invasive ones. There is an obvious difference between a procedure of removing the bacterial plaque and a surgical intervention in the bucco-maxillo-facial area. Some stomatological procedures are not very obvious for the patient after being performed, such as: occlusive rebalancing, reshaping an existing root canal obturation or fissure and facet sealing. In these cases the report will be much clearer and more detailed in comparison with more obvious procedures.

Reasonable alternatives for the proposed intervention. The dentist must present the patient all the alternatives proposed for the treatment, not only the easiest ones or the ones he is accustomed to.

Risks, benefits. The dentist must inform the patient about the possible risks, even if the possibility that they might appear is much reduced. The typical risks that appear during stomatological practice are: the possibility to injure the nerves during the procedures of oral surgery, the cracking or breaking of the needle in the canal in endodontics, breaking the bridge during prosthetic rehabilitation, the risk of post-operatory infection, etc.

The dental amalgam is a restoration material that contains 50% mercury in a complex mix of copper, silver and zinc powders. This mix is permanently releasing mercury vapour and this quantity increases during chewing, dental brushing or hot drinks consumption. Many clinical trials proved its destructive effect on the kidneys, the central nervous system, the cardiovascular system etc and it is also suspected to cause gums tattoo. In many European countries (e.g. Norway, Finland, Denmark and Sweden) the law forces the dentists to inform the patients about the negative side effects of the obturation material about to be used. The govern in some states in America (California, Connecticut, Vermont) approved the law of "the informed consent" in the case of the patients that get dental restorations.

The cost of the interventions is always important and it must be communicated to the patients from the very beginning, in order to offer them the possibility to select the conduct they can afford, but also has beneficial effects on their illnesses.

The acceptance of the intervention by the patient may also include the refusal of the treatment. Although the word consent implies the acceptance of treatment, the concept of "informed consent" applies both for refusing the treatment and for choosing an option of treatment from many.

DENTIST - PATIENT COMMUNICATION DIFFICULTIES

A good communication between dentist and patient is a necessary condition for obtaining the "informed consent" in stomatology. The ability to communicate with the patient does not appear in a natural way for most people; it needs to be developed and maintained through conscious effort and periodical training.

Three **major obstacles** are considered to prevent the good communication between dentist and patient: the differences of language, of culture and the fact that the dentist-patient communication can be altered during treatment.

Differences of language. If the dentist and the patient do not speak the same language, an interpreter might be necessary, but there is the possibility not to have a qualified person available around.

Differences of culture. Because of the different cultural perceptions of nature and the causes of the illness, it is possible that the patients will not understand the diagnosis and the options of treatment. What is considered as a sign of beauty in one culture may be considered disfiguration and mutilation in another. In these situations the dentist should work hard to make the patient understand the importance of their own oral health and of healing their medical condition and to communicate his/her recommendations.

Alteration of communication between dentist-patient during treatment. During the stomatological treatment the patients can no longer speak, hence their ability to take decisions is considerably reduced. The dentist can therefore facilitate communication by using writing or being perceptive at the patient's signs.

If the dentist successfully communicated to the patients all the information they need concerning the diagnosis, prognosis and options of treatment, then they will be able to take an informed decision.

ADEQUATE INFORMATION

It is difficult to establish just how much information the patient needs in order to be considered adequate. Specialized literature (15, 16) suggests three essential factors that determine the quality of the report:

The dentist's rational standard. It allows the dentist to select

the appropriate information for the patient. Studies show that the typical doctor tells the patients very little about their condition, which is considered not to be enough in order to obtain their informed consent.

The patient's rational standard. The dentist should know what the patients' average level of knowledge is, so that they could be able to take an informed decision. This standard focuses on the fact that the patient must know (be informed) in order to understand the decision. The patients' level of understanding depends on their intelligence, but also on the clinical situation and the simplicity or complexity of the proposed treatment (17).

The subjective standard. This standard is the most problematic into practice, because every patient needs to be informed personally, according to his own necessities and the existing clinical situation.

The quantity of information that the dentist must offer the patient depends on his personality, temper or attitude. It is not necessary to force the patient to get the information if he wants to leave all the decisions to the doctor.

The competent patients have the right to refuse treatment, even if this worsens the illness or allows a disability to appear.

THE ATTRIBUTES OF THE INFORMED DECISION
An informed decision for the treatment includes:

A relevant and clear report the patient can rely on. This depends on the quality of communication between dentist and patient, the time spent with the purpose of informing the patient being less dependent on quantity and more dependent on quality. A good dentist-patient communication can improve the effectiveness of the treatment and also reduces the patient's stress and anxiety (14, 18).

With the purpose of explaining the proposed treatment, the dentist-patient communication can be made more effective by using photographs, films or models. The cost of the treatment is always important and must be communicated to the patient.

Understanding the information – the patient understands all the information if the dentist uses a simple language and saves an adequate amount of time for the questions, etc.

Legal competence and capacity. The adult patients (over 18 years old) are legally presumed to be capable of taking decisions about their own state of health. When the patients are under aged the consent for the treatment must be obtained from their parents or legal guardians when the parents are missing. The legal guardians must get the same information as the adult patients. There are some problems when the parents are divorced and they disagree on the decision they must take or in the case when both parents agree, but their decision is not considered to be in the best interest of the child. First, the dentist should mediate between the parties. But if this fails, the dentist should take the decision in accordance with the relevant legal institutions.

The vulnerable people (mentally disabled, with material or social dependence/, the institutionalized aged people, orphans, prisoners etc.) represent a special problem. The consent for the treatment of the patients who lack judgement because some psychiatric or neurological problems (ex. dementia) is given by their legal guardian (trustee). The main criterion used for the treatment of disabled children and adults is that of the patient's best interest.

Sometimes the patients are not capable to take a reasonable, well thought decision about the options of treatment because of the discomfort and distraction caused by their illness. But they can be capable to express their refusal for a certain intervention by refusing to open the mouth. The dentist should know that the refusal of the recommended treatment does not mean that the patient is incompetent. This situation may appear just because the patient did not fully understand the dentist's recommendations and necessity of the treatment.

Capacity refers to the determinations made by the doctor in order to find out if the patient has the ability to take a specific decision in a specific amount of time. In order to have capacity, the patients must have the ability to understand their state and appreciate the indications, risks, benefits and alternatives proposed for treatment. The patient must also be able to communicate to the doctor the decision taken on the grounds of the information he received. If he can't do this, he should have a psychiatric exam.

Absence of constraint. Constraint appears when a person forces another person to do something he doesn't want or prevents him from doing what he wants.

As a definition, we can talk about constraint when the patient is willingly influenced by another person by being presented a credible threat about a possible bad thing that might happen to them, the patient being unable to fight it.

Faden et all (1987) (5) underlined **the characteristics of constraint** for a fair evaluation of this situation:

- The agent of influence must have the intention to influence another person by presenting them a severe threat;
- it must be a believable threat;
- the threat must be irresistible, that is the threatened person cannot fight it.

The patients often feel vulnerable and powerless in front of the doctor. The consent must be given willingly and not manipulated by false information. In order to encourage the voluntary consent of the patient, the doctor should explain to the patient that he takes part in the decision and he is not just signing a form. The patient should see the consent as an invitation to take part in the process of decision taking concerning his own state of health.

- The following conditions are important:
- the consent must be given voluntarily;
- the dentist must not offer misleading information;
- the patient must be allowed enough time in order to take the decision;
- if a patient refuses treatment or withdraws in any stage of the treatment he must be understood, even if the treatment were beneficial for the patient and if it is interrupted, it may result in unwanted consequences on his state of health. The patient must be carefully explained what happens if he refuses or stops the treatment.

There might be some misunderstandings or disagreements when the dentist thinks (but is not right) that:

- the patient gave his consent for the whole treatment that was planned by the doctor, just because he comes to the dental clinic according to his appointments;
- the patient fully understood and agreed to the proposed treatment just because he doesn't ask any questions or doesn't show his confusion about the treatment;
- the patient consented to the whole treatment about to be followed, but this does not apply to every plan of specific treatment;
- the patient automatically accepts the changes in the plan of treatment because they appear sometimes during treatment;
- the patient can be easily mislead, so the dentist may inform him only about the options preferred by the doctor, that he considers to be the best;
- the dentist obtained the parents' consent when they left their under aged child in the stomatological clinic for treatment, without asking any questions about what will be planned.

In all the situations, the dentist must always keep his records and files carefully. They must be clear, complete, precise, so that they can be a vital source of information. The good quality of the medical charts helps the doctor provide very good quality services, but at the same time, ensures a very solid basis for defence in case of complaint or claim. Gypsum models and X-rays can be used and kept just like the medical charts (19).

The dentist should record everything in the medical chart: the fact that the patient was informed and subsequently gave his oral consent, which is enough for most stomatological procedures. The written consent is absolutely necessary for the major, invasive or expensive treatments. Some stomatological procedures that are considered safe or minor by the professionals can be seen in a different way by some patients such as: X-rays or amalgam obturation. These patients can ask for more information or can refuse treatment.

In conclusion, the informed consent in stomatology must obey the general principles of the medical profession, but it also has some specific attributes. It will keep on evolving as a response to the continuous progress of the knowledge concerning the medical treatment, to the change towards a partnership - relationship between doctor and patient and to the new directions of the biomedical research. The most important part of the concept of informed consent is the priority of the patient's rights to understand any medical treatment, medical procedure or attendance to a medical research.

In these conditions, it is necessary to increase the standard of informed consent through *post university training* for the dentists, by increasing the patients' awareness on the necessity of a more explicit consent and underlining the educational role of the dentist.

Dental medicine must continue to meet the public expectations and, during the clinical consults, to be oriented towards interactive and realistic decisions. Both the dentist and the patient must consider the moral and legal considerations, but also the request of a good practice and adequate consent. This is to respect the essential human capacity of self-determination and the right to choose the treatment.

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