

An insight on the Consent for Clinical Procedures: A review on Types & Validity

Safalya S. Kadtane

Assistant Professor, Dept. of Public Health Dentistry, MIDSR Dental College, Latur.

Abstract:

The word consent was derived from the Latin word *consentire* which means feeling together hence to agree/to give permission. It is the agreement between the two or more parties on the matter of concern. In the medical field consent plays an important role in protecting rights of the patient's and the autonomy. The Consent is a fundamental and established principle in the Indian Law. Every person has the right to determine what shall be done to his body. The dentists being a health professional are also responsible for obtaining proper consent prior to any kind of dental procedures. The present article is aimed to provide insight knowledge about the consent, its types and about its validity.

Keywords: Autonomy, Consent, Dentist, Informed Consent, Medicolegal Aspects

Corresponding Author: Dr. Safalya S. Kadtane, Department of Public Health Dentistry, MIDSR Dental College, Latur.
E-mail id: safalya_kadtane@yahoo.co.in

Introduction:

In the ancient time the relationship between the physician's and the patients was consolidated. It was the implied duty of the doctor to do the best for the patient which he/she can, and on the other hand it was the duty of the patient to trust the doctor's decisions and the interventions. The Hippocratic Oath stuck to the professional responsibility and was more religious and the morale types.¹ with the time the doctor-patient relationship has been changed tremendously as the health providers are viewed as the service providers.²

In the present era of the medicine it is the fundamental right of the patient to know the type of treatment which physician is going to provide, to make the choices for the self-benefits and to deserve the best which the patient can. The same is termed as the autonomy which means respect to the patient's choice/decision.³ The concept of autonomy can be considered as the main reason for the origin of the consent. The word consent was derived from the Latin word *consentire* which means feeling together hence to agree/to give permission. It is the agreement between the two or more parties on the

matter of concern. In the medical field consent plays an important role in protecting rights of the patient's and the autonomy. It provides the legal platform for the patients as it does not allow the physicians/doctors to treat the patient in anyways without the prior consent from the patient.⁴ Therefore it is the morale obligations of the health professionals to obtain the consent from each and every patient under his/her treatment. The dentists being a health professional are also responsible for obtaining proper consent prior to any kind of dental procedures. The present article is aimed to provide insight knowledge about the consent, its types and about its validity.

Consent:

Consent is a voluntary acceptance or agreement of what is planned or done by another person. The lack of recording the consent is considered as deficiency in Medical Services under the Section 2 (i) of the Consumer Protection Act.

The Consent is a fundamental and established principle in the Indian Law. Every person has the right to determine what shall be done to his body.

Self-defence of body (under IPC Section 96 to 102, 104 and 106) provides right to the protection of bodily integrity against invasion by other.⁵

Legal Basis for the Consent:

The consent represents the fundamental right of the individual towards his/her autonomy and the self-determination of the individual. Thus, if a practitioner is attempting to do some procedures without the consent of the individual the service provider will be liable under both tort and criminal offense. Tort is a civil wrong for which the aggrieved party may seek compensation from the wrong doer. To standardize the practice different types of consents are laid down and the same are indicated for the different procedures as following.⁶

Who can give the consent?

There are two schools of thoughts according to the Indian legislations:

1. Section.90 of the Indian Penal Code of 186 states that, "Consent by intoxicated person, person of unsound mind or a person below twelve years of age is invalid."
2. According to Sec. 11 of the Indian Contract Act of 1872 - a competent person of sound mind who has attained the age of majority of 18 years (according to the Indian Majority Act of 1875) can legally enter into a contract.

The above two sections have contraindicative statements which might further lead to the complications, so on the safer side in the cases of interventional treatment the dentist should obtain parents' consent.⁷

Types of consent:

There are different types of consent which are based on the method of obtaining the same such as

1. Implied Consent
2. Expressed consent(Tacit Consent)
3. Informed Consent
4. Proxy consent(Substitute consent)
5. Loco Consent
6. Blanket Consent

Implied Consent:

It is a presumable type of consent. It implies that the patient is reported to the doctor for certain sort of procedure. For the certain conditions, such as the oral examination, case history or the routine physical examination such as pulse, blood pressure or respiratory rate. It is self-understood for both the dentist and the patient that these are the necessary procedures has to be done in the patient's benefits. The implied consent is legally equally effective.⁶

Expressed Consent (Tacit Consent):

Expressed consent is mainly recorded for the investigations or the diagnostic procedures which are beyond the routine physical examination. The expressed consent is once again divided into two types

1. Written Expressed Consent: When the expressed consent is obtained in the written format then it is considered as written expressed consent. The written expressed consent is obtained for major diagnostic procedures, use of anaesthesia, for surgical procedures, intimate examinations and in medico-legal cases. It is also compulsory to obtain written consent in the cases of use of narcotic drugs, newer analgesics and anaesthetic agents and in the procedures which are more than mildly painful.
2. Oral Expressed Consent: when the consent is obtained verbally in the presence of a disinterested party for the minor examination or therapeutic procedure then it is called as the Verbal/oral expressed Consent. The verbal consent is considered as equally valid to the written expressed consent when it is properly witnessed.⁴

Informed Consent:

Informed consent has different context in different things. It is variably practiced in the various areas and does not ideally meet to the theoretical concept. The simplest meaning of the informed consent is that the authorization is informed meaning of which is the patient has given the knowledge of diagnosis, relevant options of treatments, risks of the treatment and the benefits too and the patient understands

them. It should be documented thoroughly using an electronic medical record, procedure-specific consent forms, patient education materials and other options whenever possible.

The higher standards of the informed consent further safeguard the patient's autonomy and self-determination legally, ethically it protects the patient's autonomous decision making and administratively it check to ensure that the consent procedure has been done and the patient just not walked in without the same.⁸

Proxy Consent:

This type of consent is utilized when the patient is considered as unfit to give the consent because of age or consciousness and the consent is obtained from his/her parents or close relatives.⁷

LOCO Consent:

This type of consent is obtained in the cases of children in emergencies. In the cases of emergencies, if the parents or relatives are not available then even the person who is bringing the child for the treatment can give the consent.⁷

Blanket Consent:

This is the most common type of the consent which is obtained by all the clinics and hospitals in India. It is a consent taken on a printed form and almost all the things which a dentist/clinician is going to perform is mentioned on a form, there is no specific information available about the various treatment procedures which will be performed on the patient's. This consent is legally inadequate for the interventional procedures or the procedures involving risk.⁴

When consent considered as not valid?

If the consent is obtained under the following situations/circumstances, then it is considered as invalid^{4,7}

1. When it is obtained from the minors(<18yrs)
2. If it is given by a person of unsound mind
3. Given under fear, fraud or misrepresentation of facts
4. Person under the influence of alcohol
5. Obtained for illegal surgical procedures

Situations where consent may not be obtained:

Though consent is an essential aspect in a doctor-patient relationship it need not be obtained in the following situations:⁷

1. In the event of Medical Emergencies.
2. In case of a person suffering from a notifiable disease
3. Immigrants.
4. Members of Armed Forces.
5. Handlers of food and dairymen.
6. New admission to Prisons.
7. In case of a court order or request of the police

Time related Validity of the consent:

As per the legal documentation there is no time limit given for the invalidity of the consent, but it can be considered invalid if⁷

1. Patient wants to withdraw it on improvement or deterioration of the condition
2. If the patient wants to opt for some other newer treatment plan
3. Due to disease progression, the treatment choice has changed from cure to palliation.

Conclusion:

The importance of recording the consent is increasing with the time as there is increase in the awareness of the people. The consent serves both the purposes it protects the patient's autonomy & self-determination and it also provides a legal documentation for the medico-legal purpose. The choice of the consent plays important role in the validity of the consent and as said by the Edward Snowden, "consent is not meaningful unless it's informed" proper care should be taken for obtaining the same.

References:

1. Mallardi V. The origin of informed consent. Acta Otorhinolaryngol Ital. 2005 Oct;25(5):312-27.
2. Goel K, Goel P, Goel S. Negligence and its legal implications for dental professionals: a review. TMU J. Dent. July - Sept 2014;1(3):113-8.
3. Smebye KS, Kirkevold M, Engedal K. Ethical dilemmas concerning autonomy when persons with dementia wish to live at home: a qualitative,

- hermeneutic study. BMC Health Services Research. 2016;16(21):1217-1.
4. Dhingra C, Anand R. Consent in Dental Practice: Patient's Right to Decide. Oral Hyg Health. 2014;2(1): 129.
 5. Vashist A, Parhar S, Gambhir RS, Sohi RK, Talwar PP. Legal modalities in dental patient management and professional misconduct. SRM J Res Dent Sci 2014;5:91-6.
 6. Nandimath OV. Consent and medical treatment: The legal paradigm in India. Indian Journal of Urology : IJU : Journal of the Urological Society of India. 2009;25(3):343-347. doi:10.4103/0970-1591.56202.
 7. Devadiga A. Informed Consent and the Dentist. Online Journal of Health Ethics. April 2012;8(1):1-20.
 8. Hall DE. Informed consent for clinical treatment. CMAJ 201;184(5): 533-40.

