

The Importance of Informed Consent in the Accusations of Malpractice in Dentistry

Aureliana Caraiane¹, Francisc Florin Bartok², Cristina Nicolae³

¹Assoc. Prof., DMD, PhD, Dept. of Oral Rehabilitation and Ethics, ³Lecturer, DMD, PhD, Dept. of Paediatric Dentistry, Faculty of Dental Medicine, "Ovidius" University of Constanța

²PhD Student, Faculty of Dental Medicine, University of Medicine and Pharmacy "Gr. T. Popa" Iași

Informed consent is the generic agreement on conducting patient treatment. In the beginning, the consent was "specific" to surgery more than to dental profession. Currently it is a very important element of current practice in the dental office, the document that protects the dentist and also inform the patient about the procedures, risks and complications that it entails.

The term "informed consent" means the legal framework in which the patient is informed about the nature and risks of the proposed treatment, and after signing it, he agrees about the understanding of the treatment plan and its implementation.

Morality and legal principles that underlie the informed consent were universally attested first by the Nuremberg Code in 1948 which certifies a Decalogue of moral principles in medical practice and research on human being who claims in the first article that the patient undergoing voluntary in the research (1). Every patient has the right to be informed as the fundamental human right to life and freedom. The patient has the right to be informed resulting from the right to freedom, the exercise of freedom requires knowledge, truth, reality, and the right to ownership of his health (2,3). Compared to the patient who is autonomous, the one who can self-determinate/govern himself, the doctor is obliged to provide the information that is necessary in order to self-determine within the right to freedom (2,3).

Being autonomous, the patient is entitled to authorize medical action being exerted on him. To do this the doctor will inform the patient, including his recommendation regarding the treatment, and if he has been authorized by the patient, he will provide opportunities for treatment completion. (2,3)

Informed consent represents the necessary requirement of any healthcare professionals to defend themselves in a lawsuit due to liability caused by complications that may occur during treatment or observation period.

In definition, informed consent is both a process and a document. It is a process of presentation/information/acceptance of all aspects of the assumed treatment plan and its implementation relevant to the person who voluntarily confirms his desire to accept or not. Informed consent is a document, a written, signed and dated document representing the decision.

As a general rule of the medical treatment, any competent patient cannot be treated without prior information about the diagnosis, disease progression with/without treatment, the complications, therapeutic alternatives, prognosis and its consent (4).

Informed consent is an agreement, the decision of the patient by the physician determines authorization: the doctor is so entitled within his authorization (can go beyond only for good towards protecting the patient). Informed consent is a legal coverage as long as the patient is autonomous and is therefore signed by a person with legal capacity (exercise capacity status). Beyond authorizing medical action, remains the responsibility of the medical act both the as indication and its implementation.

The use of informed consent for surgery was until recent, one of the few times when a patient meets this legal act. However, in dental practice, its use was limited only to oral surgical interventions. Many dentists do not use it for therapeutic procedures performed in the dental office despite the fact that many of these procedures have imminent risks. However, with the increase of litigation, the importance of informed consent in dental office has increased considerably. It can be a vital document in the dentist's defence in cases of accusations of malpractice.

Implied consent/presumed

In dentistry implicitly or presumed consent is sometimes taken into account, which occurs when the patient opens his mouth, being considered the voluntary act of opening his mouth as accepting the procedure. This is considered as a voluntarily accept, because you cannot force the patient to open his mouth while he does not wish, however, this consent may not have a legal side, or the doctor could be able to rely on him.

Written consent

Written consent is preferable having a legal form, representing the agreement on understanding and application of the treatment plan. It is written on paper, and the patient is able to understand what will experience and what are the procedures used, and after going through these data, his will give written consent about their acceptance.

One of the biggest mistakes made routinely in dental practice today is assigning to the assistant to take the informed consent from the patient. This approach is wrong. The dentist is responsible regarding the consent. He must explain to the patient its content and he will take his agreement by signing it in his presence. At the same time, the dentist should not avoid the explanation from the most minor complications, to major ones, regardless their rate of occurrence even if is extreme (5).

Another wrong practice is to provide the patient with in vain assurances, saying that nothing can go wrong and that everything is under control. As shown, everything is possible, therefore the patient must be aware about both sides of the problem, the complications which may occur after treatment and also during treatment, regardless of the safety of the procedure.

After explaining all aspects relating to the treatment plan that will be established, the patients will give their informed consent by signing the Accord and the doctor will be then protected by the law.

A common mistake made by dentists in their effort to attract patients is to guarantee. This attempt to attract patients represents an unfair competition and the dentists offering such guarantees must assume the entire responsibilities of it. The Code does not provide a guarantee anywhere in the world. Medicine is a liberal profession and the Code of Ethics is the only legal way perfectly justified.

Exceptions concerning the informed consent

If the medical act in this case depends on a time limit, if the condition cannot be delayed, the doctor or his assistants are covered by law. Sometimes there is no time to get the approval of patient or caregivers, which is stipulated in the Code of Ethics. It defines the medical and dental emergency situation where the patient needs immediate medical care for pain, infection or bleeding.

Aspects beyond the legal area regarding informed consent

Once signed, the consent is not a civil contract between parts: the doctor does not offer contractual warranties, only moral ones. Also, it does not represent a legal framework in which the patient assumes responsibility simply; the patient has no liability because he is ill. The patient is not liable because is signing. Consent is not an agreement of the parties: patients cannot be requiring to sign written consent for invalidity (excision, amputation or on the risk of death no matter how small). The patient does not express agreement about medical care but a he authorize the physician. It is not a framework to cancel the civil rights of patient or his fundamental rights (6).

Legal issues regarding informed consent

Informed consent is the way for patient to give authorization regarding the medical act that the doctor proposed as professional recommendation. It is the expression of the patient's autonomous exercise of civil rights (legal competence expression) and proof of outsourcing (transfer) therapeutic decision from doctor to patient. It is self-assumed by the patient, which takes the decision for carrying all of the medical risks. This self-assuming act is made once accepting the surgical procedure and the proposed treatment plan that includes the possible complications that can occur. Consent represents the proof of the patient understanding the medical information (suitable), containing relevant information that led to the informed decision of the patient: purpose, nature, benefits, risks, lack of treatment, alternative treatments with their risks (6).

Consent removes, in principle, legal liability of the doctor in case of failure (result compared to), keeping open liability for negligence or recklessness in relation to the means (diagnosis, therapeutic decision, curative or medical care as long as they prove to be a mistake and not an error).

In conclusion, dentists have the obligation of patient information regarding the informed consent and also to present its reasonable risks, benefits and alternatives to any invasive procedures. The definition of invasive procedure does not stop only at oral surgical interventions, it includes any therapeutic procedure that may compromise the physical integrity of the patient. The dentists may be accused of malpractice if they caused harm by the presence of complications or an unfavorable outcome in the absence of informed consent, even if therapeutic procedures were performed in accordance with good practice guide. While signing a consent will not guarantee the lack of accusations of malpractice, it is a way of defence for the dentist and patient through accurate and complete information regarding all the aspects involved in the treatment (7).

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Corresponding author: Aureliana Caraiane, Assoc. Prof., DMD, PhD, Dept. of Oral Rehabilitation and Ethics, Faculty of Dental Medicine, Ilarie Voronca street no. 7, Constanța 900684, Romania. E-mail: drcaiaiane@yahoo.com