Chapter 1

Revisiting Informed Consent: A Critical Approach to Physician-Patient Relationship

Omur Sayligil

Department of History of Medicine and Ethics, Faculty of Medicine, Eskisehir Osmangazi University, Turkey

*Corresponding Author: Omur Sayligil, Department of History of Medicine and Ethics, Faculty of Medicine, Eskisehir Osmangazi University, Eskisehir, Turkey, Tel: +90 222 239 29 79 / 4505; Fax: +90 222 239 37 72; Email: sayligil@ogu.edu.tr

First Published April 26, 2016

Copyright: © 2016 Omur Sayligil.

This article is distributed under the terms of the Creative Commons Attribution 4.0 International License (http://creativecommons.org/licenses/by/4.0/), which permits unrestricted use, distribution, and reproduction in any medium, provided you give appropriate credit to the original author(s) and the source.

Abstract

The paternalistic approach to physician-patient relationship was replaced by the understanding that mainly upholds patient autonomy. In paternalism, physicians make almost all decisions on behalf of patients, and patients are expected to comply with the decisions. In such a case, although physicians bear the whole responsibility, the patient’s right to determine her/his own future is jeopardized. As a requirement of patients’ right to self-determination, “informed consent” provides an instrument for protecting and determining physicians’ and patients’ will and requirements in an elaborate and respectful way. The patient’s right to self-determination is not only a fundamental human right but also an ethical right. Observing the patient’s right to self-determination in the provision of healthcare services is certainly a sign of the respect for human rights.

This study focuses on human dignity and the patient’s right to self-determination, discussing the physician-patient relationship based on the concept of informed consent. In the physician-patient relationship, the patient is mostly the passive, vulnerable and obedient party whereas the physician assumes the role of recovering the patient’s health. Today, many fields of medicine have adopted the dehumanizing approach that “there are not patients, there are illnesses”. Yet, there is a need to return to the traditional paradigm that “there are not illnesses, there are patients” in order to solve many communication problems in the physician-patient relationship.
Introduction

Health is the source of life. It is a positive concept that centers on social and personal sources as well as physical capacity [1].

Communication is a multifaceted and comprehensive process. Even when performed under standardized conditions, communication may fail or lead to wrong directions and misunderstandings. There are several approaches to communication. In the physician-patient relationship, taken a special type of communication in this study, there is a need to consider communication in terms of both process and semantics [2].

1. Process Approach: Communication is a process where the main objective is to “transfer messages”. According to this approach, an individual communicates with another individual in order to influence their behaviors or mentality.

2. Semantic Approach: Communication is the production and mutual share of meanings. The interaction between individuals is important. According to this approach, the reason for any failure in the communication process is cultural differences between the physician and the patient as well as qualitative incompetence.

Although the increase in the number and use of modern social institutions offers more opportunities for the improvement of the quality of life and contributes to revealing what is unknown in the universe, uncertainties still exist and are not few in number. Individuals are obligated to make a choice between what they know and what they do not know [3,4].

Health communication mainly predicates on interpersonal and particularly face-to-face interaction. However, because of social and psychological reasons, individuals may have difficulty in expressing themselves and understanding others. Advances in medicine have placed so many interventions, tools and devices and so much information between physicians and patients, which resulted in the weakening of physician-patient relationship and the understanding by physicians that patients are merely objects that need treatment. “Dehumanization” in medical practice may be defined as disregarding human centeredness in the physician-patient relationship. Hippocrates essentially refers to this concept [5,6], arguing that “it is far more important to know what person the disease has than what disease the person has”. The point to consider is perceiving and conceiving the fact that patients are not made up of only a physical disorder to be treated, but they are human beings with values, beliefs, expectations, anxieties and feelings.

Physicians have knowledge and skills of their discipline. Patients have knowledge of their life and experiences more than anyone else. They are mutually important for each other. Each party has knowledge of what the other
party does not have. Even just because of this, there is a need for bilateral communication between physicians and patients [7].

**Important Concepts in Physician-Patient Relationship**

Interaction is a concept used to define interpersonal activities. The feeling of freedom grows as interaction increases. With interaction in the physician-patient relationship, the patient is no more be the passive part of communication and is likely to be in a position to lead and guide the process. Thus, the patient will have a stronger position with the feeling of freedom to choose.

Trust is the most important component that contributes to obtaining expected outcomes in the physician-patient relationship. The physician’s communication skills, professional competence and specialization are based on trust. Trust between the physician and the patient enhances cooperation in medicine. The importance of mutual trust and interaction has been increasing particularly in the case of chronic diseases that require continuous care and follow-up. As patients are the vulnerable part in the physician-patient relationship because of the illness, the patient’s trust on the physician is more important. The physician-patient relationship relies on trust. Generally, trust is maintained as long as one party – physician – observes interests of the other party – patient. However, literature shows that the patient’s trust on the physician has so far been a matter of concern more frequently [8,9].

Unless patients are informed adequately, it is hard to build trust in the physician-patient relationship. Patients are in need of being informed and trusting in order to fulfill what is required from them during the healthcare process. Otherwise, they may be reluctant to share personal experience and knowledge, to get medical tests performed and to use medications [10]. Patients have the right to information about their state of health and treatment alternatives. The quality and quantity of information may differ each patient. Treatment alternatives, risks, patient’s wishes should be taken into consideration in the treatment process in a way to serve the best interests of the patient.

Conflict encompasses incompatible targets, overlapping requirements, difficulty in making a choice and impairment in decision-making mechanisms. Poor communication is one of the main causes of conflict. Poor communication is the result of some factors, including failure in using layperson’s terms in the informing process, inadequate exchange of information and personal differences in comprehension. A report of 2007 [11] includes suggestions on communication processes standardized to achieve patient safety goals. The World Health Organization (WHO) suggests that patients and their families should be informed clearly about the patient’s medical
condition and treatment plan, patients should get explanations about drugs prescribed and how to use them, and only informed patients can be held responsible for their care [12,13]. The same document emphasizes that patients should have the opportunity to read and get informed about their medical records and that communication processes play an important role for preparing families to further steps of healthcare.

**Human Dignity**

It was I. Kant, who defined the concept of human dignity in the closest way to the sense used today. The distinctive trait of human beings is the goodwill, which provides them with human dignity and value, and the autonomy to use the will as an individual. This point of departure leads us to define human dignity as self-respect and making others to respect us. Taking human as a value on its own derives from the consideration that human dignity is an “authorization” and that human rights have been violated continuously [14]. The concept of human dignity constitutes the core of many documents related to human rights. Dignity is directly related to the fact that human beings have intelligence, and dignity is of particular importance in an individual’s relationship with herself/himself and others. Human dignity exists independent of experience and position. Dignity cannot be considered a trait that belongs/will belong to a certain person/group of persons. A person is no longer a subject and no longer has dignity when she/he is taken under the control of others, others intervene in her/his life or others make decisions on her/his behalf. Rendering a person worthless also means the violation of human dignity. A close look the Universal Declaration of Human Rights shows that people are equal in terms of both dignity and rights. Dignity is not randomly present in some people. People have dignity not because of personal traits they have, but just because they are human. This must lead us to the fact that there is no distinction between human beings. Human dignity is the source of rights. People have rights and this is just because of being a human. As human beings transform their real knowledge of human, society and the nature into consciousness, they quest for concepts such as freedom, equality and honorable life and determine rights to achieve them [14].

Considering that human dignity is one of the most fundamental rights, holders of dignity are entitled to claim their rights before the court in case of a violation.

Giving informed consent enable patients to determine their future, as they have the basic right to self-determination. If physicians adopt a paternalistic approach by making decisions and determining treatment plans on behalf of the patient and offering such plans as special options that patient has to choose, the future of patient would be determined by someone else. This is a violation of human dignity.
Alan Gewirth contends that what supplies the basis of human dignity is the fact that human action is purposeful. Determining their own purposes, human beings have dignity and should be aware that other people have dignity [15].

The concept of human dignity has a large scope. In this respect, the following constitute violations of human dignity: failing to satisfy basic needs of a person, depriving a person of the right to make decisions and develop herself/himself, hindering a person from making her/his own rights, leaving a person in the midst of pain and suffering, and not paying attention to the confidentiality of personal information. Letting a person make an autonomous decision about a medical intervention that is likely to harm her/his corporeal integrity serves as an example for the respect for human dignity. The concept of human dignity not only endows the holder with rights, but also burdens her/him with obligations [14]. The principle of the immunity of human dignity upholds the spiritual and social value attributed to a person for being a human and respect for persons. The immunity of human dignity applies to all fields of law. Human dignity gains a social nature in the field of ethics. This is also the field where dignity claims are tested.

No Relationship is Purely Personal

In a healthcare center, it is not important which nurse injects the drug; however, it is very important that the injection is performed properly by a competent nurse. Based on this example, the relationship between nurse and patient may be defined as only a mutual contact, not as an interpersonal communication. However, a relationship is personal as long as a person enters into communication with another as a unique individual. Many relationships have both fixed and historical aspects. To exemplify, we like our physician not just because she/he is a physician, but because she/he is a specific person. Our relationship with the physician gains a historical aspect as we go on seeing the physician for the health problem. However, patients may prefer a relationship where they communicate with physicians not just because they receive healthcare services from the physician but because they are special persons whose advices are of specific importance to the patient.

A person values her/his existence. This does not mean that the value of her/his existence is higher than that of others. Individuality or value of a person is never higher or better than that of others [16].

Respect for Persons

J. Harris suggests that there are two components of respect for persons: 1- serving the best interests of others and 2- respecting their wishes. These two components complement each other. However, these also lead to the most debatable issues in medical ethics [16].
Serving the Best Interests of Patients

Undoubtedly, one of the most important obligations of physicians is to serve the best interests of patients and seek solutions that produce such interests. This may seem to be conflicting with physicians’ efforts to serve the interests of patients. “Paternalism” involves intervening in another person’s life for her/his benefit regardless of her/his demands and opinions. Although the person’s benefit lies at the center of paternalism, the behavior implies that the person is incompetent. In a physician-patient relationship under the influence of paternalism, the patient will be deprived of the right to express, discuss and put into practice her/his decisions, and thus will not be an autonomous individual. This is only one of the factors that require us to reconsider receiving informed consent from patients [17,18].

In this process, having knowledge of the patient’s wishes is important. Respect for the patient’s wishes and expectations is an indicator of respect for life. Patient life has a value because each patient is an individual. Each patient has demands in their life. As pointed out by J. S. Mill, each person is free to make and put into action plans about her/his own life [19].

Informed consent should be reconsidered in order to ensure that physicians are cognizant of and respect patients’ wishes. Another question that arises here is how the physician makes a choice between respect for the patient’s wish/preference and the patient’s benefit if patient’s wishes/preferences are likely to harm her/him.

Autonomy is defined as an individual’s freedom to make a decision and choose a certain way of life [17,20].

In the physician-patient relationships, informed consent is of particular importance in dialogues related to diagnosis and treatment to respect the patient’s integrity, dignity and fragility in the light of the principle of respect for autonomy.

The patient-physician relationship is defined in terms of loving and struggling. In this relationship, physicians are required to respect the patient’s arguments and be open and willing to communicate. Communication should never be an offending and obstructive process and should never include critical dialogues in semantic terms.

In therapeutic relationship, the patient and the physician are equal although the physician is the professional and the patient receives help from the professional. This approach mainly concentrates on self-development of the patient.

Patient’s decisions are less autonomous when their beliefs and choices do not predicate on correct information. Patients may fail to make the best decision about their future because of lack of information. Patients are expected to make the most autonomous decisions when their decisions are based on thorough information about their health condition.
Healthcare professionals have to inform patients thoroughly before getting their consent for a medical intervention.

Authorization is a process that allows more patient control over decisions and acts that affect health [17,18]. It is directly related to consent/informed consent.

Informed consent is a tangible indicator of trust in the physician-patient relationship. This document is an official instrument that provides evidence about the patient's right to self-determination. It makes the physician-patient relationship gain legitimacy [21].

According to Article 17 of the Turkish Constitution, everyone has the right to life and improve her/his corporeal and spiritual existence. The corporeal integrity of a person cannot be violated except under medical necessity and in cases prescribed by law, and nobody can be subject to scientific and medical experiments without her/his consent. According to the Regulation on Patient Rights, a medical intervention is illegal when conducted without the consent of patient or persons who are entitled to decide on behalf of the patient.

Illegal acts bring about disciplinary sanctions and fines with regard to the administrative law, imprisonment and fines with regard to the penal law, and compensation penalty with regard to the law of obligations.

Patient gives informed consent for a medical intervention. Upon the patient’s consent, the physician conducts the intervention based on predetermined goals. The patient’s consent determines the borders of medical practices to be performed by a physician. The concept of informed consent, existing since the ancient ages, constitutes the basis of patient rights [22].

There is a need to revise some concepts related to the informed consent in consideration of the physician-patient relationship. Patients should primarily have the capacity to understand and make decisions related to concrete incidents.

Informed consent is the acceptance of medical intervention by a patient voluntarily after the physician makes an adequate and appropriate explanation of the treatment plan with its risks, benefits and alternatives as well as the risks and benefits of alternatives, and it is ensured with no hesitation that the patient has full understanding of explanations [8].

The physician has responsibility to disclose appropriate information to the patient. Patient capacity is an important concept in both ethical and legal terms in the context of patient's right to self-determination. A patient's capacity to understand, comprehend and decide is important in the process of obtaining informed consent.

From the perspective of process approach to the physician-patient relationship, the physician should be able to assess the patient’s age, physical and mental condition, ca-
capacity to understand and cultural background. From the perspective of the semantic approach, the patient should have the capacity to understand and evaluate the outlines of planned medical procedures and their results, in other words the scope, emergency and effects of the intervention.

Capacity should be assessed in different ways for adults and children. The lack or presence of capacity should be assessed in consideration of decisions to be made and reconsidered throughout the process. Any adult with mental capacity is entitled to consent to, cease at any stage of the process and renounce the plans and interventions related to her/his diagnosis.

A perfect relationship between the patient and the physician is required for ethical and legal functioning of this process.

People have the right to make decisions about their own body. All medical interventions should conform to this fundamental rule.

In the most general sense, the information provided by the physician must include diagnosis and treatment methods that entail intervention in incorporeal integrity, risks and side effects of such methods, course and results of the disease and situations that require deviation from the treatment plan [17,22].

How much information does the patient need in the physician-patient relationship? Was the patient informed previously? What does the patient know? What does the patient need to know? When the diagnosis process is completed, the following should be explained clearly to the patient and/or, when required, to her/his family members: treatment suggested, goals, advantages and risks of the treatment, and if any, alternatives to the treatment, period required before resuming daily rituals, drugs to be prescribed, how to use drugs, drug interactions, (when needed) what to do in home care, and persons/institutions to be contacted when needed. Healthcare professionals should keep in mind that providing information is a process and ensure that the patient and her/his family clearly understands what is explained [8,23].

The consent cannot be general and unclear. The physician cannot provide information that covers all interventions and ask for a general consent from the patient. Given that each person is unique, consent should be specific to each person. This is a legal obligation.

There is a need for explicit declaration of the consent to a certain medical intervention. Such declaration should be made by the patient or her/his legal representative.

Because the patient is a human being, she/he constitutes the basis of ethical doctrine. It should be kept in mind that there is always a need for universal limitations regarding the agreement on action related to needs, lives
The patient’s right to self-determination merely arises from being a human.

The patient has the right to reject treatment after being informed. However, certain conditions should be fulfilled before the patient makes a decision. Primarily, the patient should fully comprehend what is told to her/him. She/he should know what is going to happen when the treatment is rejected/ceased. The patient’s decision should be autonomous, and predicate on reasonable justifications.

Informed consent should be in a written form in order to prevent any conflicts between the physician and the patient [14].

Informed consent should be voluntarily given by the patient that has the capacity to make a decision or her/his legal representative. The patient should be informed by the physician that is to perform the treatment. The physician should respect the patient’s decision.

The following points should be considered with regard to informed consent:

- Physicians and other healthcare professionals do not have adequate knowledge of informed consent and its procedures. The medical, legal and ethical aspects of methods and content of informing should be specified in a detailed way and known fully by physicians and healthcare professionals.

- The fact that each adult has the right to know and decide any interventions on her/his body should be considered before the content of information is determined [25].

- One of the preconditions for getting a valid informed consent is giving enough time to the patient. Article 4 of the European Charter of Patients’ Rights stipulates that all information that the patient needs to know must be given at least 24 hours before the intervention to enable the patient to make a reasonable and appropriate choice [26].

- Information must be given by the physician that is to perform the medical intervention. It is also the responsibility of the treating physician obtain informed consent from the patient. Nurses, consultants or medical school students cannot obtain consent. However, these people can provide information related to the procedures to be performed under their responsibility [27].

Patients are more likely to comply with written instructions. Written instructions reduce the risk of forgetting and misunderstanding and the need to re-contact the physician. If the physician’s writing is illegible, patient-tailored documents prepared beforehand or printouts may be used. If the patient’s name is handwritten by the physician on the document, the document becomes more customized. What brings the patient to the physician is her/
his concerns about state of health. It may be difficult for the patient to get focused. It is important that the physician makes the patient confirm the information provided. Statements such as “I suppose you have understood what I have told so far. Now let’s repeat how to use the drug.” or “Let’s go over together how to use the drug to be sure that there is no missing point” encourage patients to assume responsibility of their health.

- The patient is the physician’s addressee in the information providing process. If the patient is a minor or disabled or have mental incapability, her/his parents or guardian may demand the information.

In certain cases, patients have the right to determine the addressee(s) of information and the degree of information to be shared with others.

If accepted by the patient, the physician must include family members, particularly spouses to the physician-patient communication. Research has shown that, when a family member is included in the communication, patients are more likely to conform to appointment time, drug prescriptions and treatment plan [28].

Family members are required to take responsibilities such as preparing food, writing down time of medication administration or complying with the treatment plan in this process. Healthcare professionals should ensure that family members are able to fulfill such responsibilities.

Some patients are happier when they get support and care from family members.

Patients need to get basic information on their illness. However, some studies have shown that patients may misunderstand or fail to listen to the physician’s explanations [28].

This may be because of the patient’s lack of background information on the illness or unclear explanations of the physician.

For example, an explanation such as “I advise this medication treatment plan. Without such a treatment, hypertension may increase the risk of kidney failure, myocardial infarction and cerebral hemorrhage” does not make sense for most patients. Such an explanation is in most cases confusing rather than motivating.

**Informed Consent Forms**

Standard forms are useful in that they do not let the physician omit any important detail. However, what should be kept in mind is that “it is far more important to know what person the disease has than what disease the person has”. Informed consent boosts trust on the physician and increases compliance with the treatment procedures. Standard forms should certainly be patient-tailored [29].

The physician may add handwritten notes such as “very important” or “please pay attention to this”, or un-
derline or circle important parts on written materials to ensure the effectiveness of these materials. The physician should handwrite her/his name and the patient's name. Patient-tailored documents require specific attention.

In some cases, it is better not to write the patient’s name on information materials. For instance, patients are likely to get embarrassed when booklets on HIV or alcohol addiction on which their name is written are seen by others.

An informed consent form signed by the patient is a document that provides information on treatment and clinical interventions. They should not only be comprehensible but also include information required by the patient; and the patient should be provided with adequate time to make a decision before signing the form [30].

**Conclusion**

What makes medicine unique is that it is a scientific discipline that entails too much interaction with persons, each having distinctive characteristics.

A healthy professional communication is likely to eliminate most of the problems in the physician-patient relationship. A good communication is not only a valuable skill but also an important and required skill in the professional life of physicians.

**References**

9. Neo LF. Working toward the Best Doctor-Patient...


12. www.who.int/patientsafety/solutions


