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SURGICAL HANDICRAFT



SECOND EDITION

R Dayananda Babu

Forewords
Santhosh John Abraham
PGR Pillai

JAYPEE

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6 Ethics and Consent

R Dayananda Babu

INTRODUCTION

What constitutes good professional practice depends on many factors such as:

- Medical ethics
- Law relating to consent
- Confidentiality
- Personal autonomy
- Trust between patient and doctor.

The doctor may be faced with ethical challenges, especially in matters of life and death to withhold or withdraw life-sustaining treatment is a big challenge. So, also to prolong the life of a patient who is in close to death situation. In the present era, orders like "do not resuscitate" may be an unreasonable demand.

Respecting the privacy of a patient is equally important as patient autonomy, which is called confidentiality. Maintaining the dignity of the patient is very important, especially exposing the private parts in open wards without proper screen. Instead of calling patients name calling him cot no. 9 or case of rectal cancer are dehumanizing. With the explosion of medical technology and knowledge maintaining, standards of excellence is difficult. This needs continuing education throughout a surgeon's life.

Atul Gawande noted that physicians too suffer the emotional reactions of failure when dying patients seek quality rather than quantity of life and often make decisions that worsen the problems by failing to ask the patients their basic wishes. The patient may have a better quality of life by palliative care than invasive treatments.

The four important pillars of medical ethics are:

1. Patient autonomy
2. Beneficence
3. Nonmalfeasance
4. Justice.

For patient autonomy, the most important thing is a prior informed consent.

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What is consent?

Informed consent is patient's right and physicians duty. However, broad the consent might be for diagnostic procedure, it cannot be used for therapeutic surgery. It is a practical combination of salesman ship, ethical problem solving, and psychological nurturing. It requires the recruitment of the patient and family as allies in decision-making process. Rather than a legal requirement, informed consent requires an ethical commitment to the patient, your peers, and yourself. In summary, it involves communication, documentation, ethics, and legal issues.

If a medical practitioner attempts to treat a person without valid consent, then he will be liable under both tort and criminal law.

Tort—is a civil wrong for which aggrieved party may seek compensation.

Battery—is an act that either intentionally or negligently directly causes some physical contact with another person without that person's consent.

All medical procedures, examinations, diagnostic procedures, and medical research on patients are potential acts of bodily trespass in the absence of consent. Potential acts of bodily trespass or assault involve Indian Penal Code (IPC) 351. The IPC section dealing with self-defense of the body are Section 96 to 102, 104, and 106.

TYPES OF CONSENT

- Implied or tacit consent—when a patient is coming for consultation, it is implied that patient is willing to undergo inspection, palpation, percussion, and auscultation. Any other examination including intimate examinations requires written consent.
- Written consent—all major diagnostic procedures, anesthesias, surgeries, intimate examinations, age determinations, examination for potency and virginity, and other medicolegal examinations need written consent.
- Proxy consent—the consent given by the relative or guardian (in the case of minor—<18 years).
- Informed refusal—the final decision for any procedure will be taken by the patient based on patient autonomy. The patient has got the right to refuse any form of treatment. In such situations, the informed refusal must be obtained and documented.

When the patient is unconscious and there is nobody to give consent on behalf of the patient and there is imminent danger to the life of the patient, there is no need for formalities including consent. However, it is important to take second opinion from another specialist and document the necessity of the procedure along with signature from a witness.

The consent by the patient for a particular operative procedure cannot be treated as consent for unauthorized additional procedure.

Any additional procedure involving removal of an organ only on the ground that it is beneficial to the patient or is likely to prevent some damages

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developing in the future is unacceptable. When there is imminent damage to the life or health of the patient and additional procedure is required, in that case, it may be accepted.

SEVEN COMPONENTS OF INFORMED CONSENT

1. Decision-making capacity
2. Voluntariness
3. Disclosure
4. Recommendations
5. Understanding
6. Decision to consent or refuse
7. Autonomous authorization.

The decision is taken by the patient after understanding the treatment options and information disclosed by the doctor. The doctor can recommend treatment options, but the decision is made by the patient voluntarily. The patient will finally intentionally authorize the doctor for a specific procedure. Persons who have attained the age of 18 years are considered to have attained the age of maturity and competent to give consent legally.

For minors (<18 years), parental consent is required for any form of procedure. For physical examination alone, those who are 12 years or above can give consent.

Doctrine of Disclosure

The doctor is bestowed with the final right to decide how much information shall be divulged to the patient. There are no clear parameters laid down by the court regarding the quantum of information. However, it is important to describe the benefits of the operation and the consequences of alternative treatment approaches. In a situation where surgery will produce rapid recovery, what will happen if the operation is not carried out and it is also important to disclose the perioperative complications (such as infection, intestinal leak, hemorrhage, poor healing, and death), disability, and possible recurrence of the condition.

Exceptions to the Obligations to Disclosure

- Patients who choose not to be informed
- Disclosure would cause psychological harm
- Emergencies where valid consent taking is not possible—in such situations, the doctor can exercise *therapeutic privilege*. However, full disclosure will be made to the relatives and it should be documented.

Consent would not be a free consent if it is caused by coercion, undue influence, fraud, misrepresentation, and mistakes.

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How consent is taken?

It requires the recruitment of the patient and family as allies in the decision-making process.

"Good communication makes for good medicine and good records are essential for the defense of doctor"—David Bogod.

IDEAL PLACE FOR TAKING CONSENT

Choose a relatively quiet setting away from the chaos of the emergency room, intensive care unit, or operation theater.

Introduce yourself and all members of your team who are present. Conduct the session in sitting position, you sitting at eye level with patient and family. Maintain constant eye contact with each of them. Do not ignore somebody hiding in the corner of the room for she or he may be the one who becomes your enemy. This is not the time to smile or joke around. Just play the serious surgeon committed to the well-being of the patient.

Use simple language preferably in comprehensible nonmedical terms in local language.

Ask questions and assess they are understanding. Be friendly, empathetic but professional, caring, honest, open, and informative. Language must be the one you must use in speaking to one of your own nonmedical relative. Describe the expected benefits of operation, consequences of alternative treatment approaches. Say, e.g. in a case of sigmoid colon carcinoma with obstruction in an elderly patient gives the following options:

- Nonoperative management will result in slow and difficult death
- Surgery will lead onto rapid recovery with long-term cure
- In between, potential difficulties of perioperative complications and death are possible events
- Discuss the general potential for postoperative complications such as infection, leak, hemorrhage, poor healing, must be explained
- Before any major emergency operation, the need for reoperation based on your operative findings must also be revealed and tell them that reoperation represents a continued management effort.

ILLUSTRATE THE PROBLEM AND PLANNED PROCEDURE

Draw schematically the lesion, the segment, or part you want to remove, how you are going to join the ends, need for ostomies, etc. Write the diagnosis the name of the operation and hand over this paper to the family. The members of the family will restudy this piece of paper.

Remember the patient's family is your greatest ally in promoting your plan of action.

Make the family members partners involving them early, confidently, and continuously sitting yourself as a knowledgeable and compassionate advisor.

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ETHICAL PROBLEM SOLVING

The operation you offer is ethical if it is expected to save or prolong the patient's life or palliate his symptoms and can achieve this goal with reasonable risk-benefit ratio. You must be convinced that there are nonoperative treatment modalities that are safer or as effective as your proposed operation. The burden of proof is on you.

MEDICOLEGAL CONSIDERATIONS

"Surgery is the most dangerous activity of legal society"—Nyström.

Medicolegal dangers associated with abdominal surgery greatly depend on where you practice. In some places, surgeons can get away with almost anything. Emergency surgery is a legal minefield. Young surgeons tend to be overoptimistic trying to cheer up the family emerging from the operation room assuming a tired hero and announcing—your father is stable, he took the operation very well, and let us hope he will be home next week. It may raise high hope and expectation and subsequent anger and resentment, if complication should develop.

A better script might be—the operation was difficult, however we managed to achieve our goals. The cancer is out. Considering your father's age and other illnesses, he took it well. Let us hope for the best. But you must understand that the road to recovery is long and as I mentioned before, there are still many potential problems ahead.

DOCUMENTATION

What has not been documented in writing did not actually takes place. Your notes can be brief, but must encompass the essentials such as—elderly male patient with diabetes mellitus, chronic obstructive pulmonary disease presented with abdominal pain and distension. The plain X-ray revealed large gut obstruction. Patient is a high-risk patient and the therapeutic options, risks, and potential complications are explained to the patient and family. They understand the need for emergency surgery, need for colostomy, and may need further operation.

AVOID SELLING UNNECESSARY OPERATIONS

Be honest with yourself. Consider the risk-benefit ratio of the procedure. It may be easy to convince a worried family that a futile operation is indeed necessary and then at the time of inevitable mortality, explain that the family forced me to operate. Do not operate on brain dead patients and intubate and ventilate.

"One should advice surgery only if there is reasonable chance of success. To operate without having a chance means to prostitute the beautiful art and science of surgery"—Theodor Billroth (1829–1894).

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GOLDEN RULE

"Do unto others as you would have them do unto you". Would you recommend the same treatment to your father, mother, wife, or son. Studies showed that surgeons are much less likely to recommend operations on themselves or their loved ones.

"The patient's family will never forgive a guarantee of cure that failed and the patient will not let the physician forget a pronouncement of incurability if he is so fortunate as to survive"—George T Pack (1898–1969).

SUMMARY

- Informed consent is a patient's right and physicians' duty.
- However, broad the consent might be for a diagnostic procedure, it cannot be used for therapeutic procedures including surgery.
- Consent for a particular operative procedure cannot be treated as consent for an unauthorized additional procedure.
- Separate consent is required for anesthesia and blood transfusion.
- Patient autonomy is one of the most important pillars of ethics and patient's decision to accept or deny a procedure is final.
- Documentation of your consent and discussion with patient is important.

Finally physicians have a moral commitment to place the interest of their patients above their own self-interests. Medical practice cannot be considered as a merely a business. Professionalism in surgery will require firm commitment and willingness to make sacrifices.

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SURGICAL HANDICRAFT

Manual for Surgical Residents & Surgeons

The second edition is completely revised and updated with addition of 13 more chapters. The book is illustrated with flowcharts and algorithms. The salient features are:

- Sterile handwashing and gloving techniques
- Resuscitation of patient and trauma victim
- Insertion of IV cannula, Ryles tube and Foleys catheter
- Local anesthetic and nerve blocks
- Minor surgical procedures
- Intestinal anastomosis and vascular anastomosis
- IV fluids and fluid management
- Energy sources in surgery
- Surgical nutrition
- Ethics, informed consent and negligence
- Head injury and orthopedics.

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