CENTER FOR PRACTICAL BIOETHICS
GUIDANCE AT THE CROSSROADS OF DECISION

The Ethics Dispatch

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"The object of philosophy is the logical clarification of thoughts. Philosophy is not a theory but an activity."

- Ludwig Wittgenstein

Hot Topic

Informed Consent in Teaching Practice

One of the most paramount responsibilities of a healthcare provider is to obtain informed consent from their patients to go forward with any procedure, examination, or test. To obtain said consent, providers must fully disclose all relevant information to their patients, including any risks and benefits associated with the plan of care, ensure that all the information is completely acknowledged and understood, and allow patients to make their own informed decisions regarding their plan of care (Derse & Schiedermayer, 2015).

Unconsented Pelvic Exams

Teaching medical students to perform pelvic examinations on unconscious patients–*without* informed consent–has been a common but unethical practice that is far too often swept under the rug. These non-consensual exams are viewed by some as a learning experience for the students to practice. The patients are usually anesthetized while being prepped for a procedure. After the physician conducts the necessary exam, many students have been asked to repeat it once again, all while the patient is completely unaware and unable to make this call for themselves (Desjardins & Mufson, 2023). In other cases, some patients have come to find that a medically unwarranted pelvic exam had been done on them, and again, without their consent.

It is presumed that "…these exams are often done for the benefit of the student, not the patient" (Valencia, 2023). Ethics issues tend to arise when one or more of the well-known "four principles"– respect for personal autonomy, beneficence, nonmaleficence and justice – conflict with each other (Jonsen et al., 1982) or are in conflict with other goods, such as the adequate training of medical students. In this instance, the principles of autonomy and nonmaleficence are especially relevant. The principle of respect for personal autonomy refers to "the freedom we ought to enjoy to choose our own way in life and to make our own decisions within moral limits" (Panicola et al., 2011), while the principle of nonmaleficence refers to the obligation we have as

humans to not inflict harm onto others.

Learning Experience or Ethical Breach

Although the intent of an unconsented pelvic exam by a medical student is presumably without malice toward the patient, it is indeed a violation both of the principles of autonomy and nonmaleficence. While the patient is unconscious, they lack decision-making capacity and have no immediate choice in the matter.

Most medical students would not have been fully trained to do such an exam, which is the point of providing opportunity, yet that increases the risk of harm and hence also the complexity of an informed decision. Students are pressured into doing something that they ought to recognize for what it is: a disrespectful, unconsented procedure that could constitute assault against a vulnerable victim.

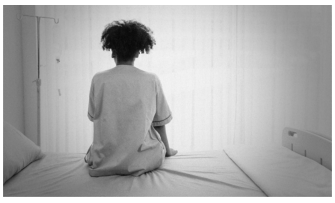
Their physician preceptor, with or without awareness, has instigated that violation of trust and harm. They subsequently would and should be held responsible, both legally and ethically (Desjardins & Mufson, 2023). Probably clinical faculty have not fully considered the ramifications of this longstanding teaching practice that nonetheless violates at least two fundamental biomedical ethics principles.

Informed consent is arguably one of the most important responsibilities of a healthcare provider. It is vital that obtaining patient consent is based in the significance of achieving goal concordant care. Those teaching physicians and their students who take shelter in a “don’t ask, don’t tell” mentality will continue to deprive their patients of the agency they are entitled to and disregard the harms that inevitably come from nonconsensual pelvic exams.

Bioethics in the News

Peter Singer: Are experiments on animals ethically justifiable?

The morally ground-shifting legacy of Ian Wilmut and Dolly the sheep



Racism Persists in Health Care. This Houston Bioethicist Aims to Change that.

[UK could revise standards for infant brain death after Baby A experience]

[Let People Collect Sperm From the Dead]

[This Bioethics Journal Wants To Pull Back the Veil on a Huge Medical Taboo]

Case Study

I Really Don't Want this Procedure

DISCUSSION PROMPT: ***What is missing in this case scenario that could be added so as to render it an example of a minimally acceptable informed consent conversation between physician and patient?***

Melanie is a 43-year-old female who has been having intestinal pain and difficulty with bowel movements. After several weeks waiting for an appointment time, she goes into the clinic and has a long conversation about her symptoms with the physician. Melanie believes that her issues are related to lifestyle and diet and wants to discuss an elimination diet. But her physician, Dr. Issacs, tells her that she recommends a colonoscopy. When Melanie says that she is uncomfortable with a colonoscopy and that she would prefer not to have that procedure, Dr. Issacs tells her that it could not hurt, and it would also be a great opportunity to help the hospital residents gain valuable experience. Melanie feels that she is being pressured into an unnecessary invasive procedure, but she does not feel she is able to voice her concerns because she does not want to have to find another physician and wait for an appointment. A nurse requests an ethics consult because she can tell Melanie is uncomfortable.

Ethical Musings

Implied Consent and the Standard Patient Model

Informed consent is a foundational concept of modern healthcare. Patients have the right to be informed of and aware of the diagnosis and prognosis of their condition. They need to be informed of the alternative treatment options, risks, benefits, and anticipated outcomes of any given procedure before they can give or withhold their consent. In some situations, however, the patient is not able to make a healthcare decision. This may be due to an acute injury or medical condition that negatively impacts the patient's decisional ability or leaves them temporarily or permanently incapacitated.

No Capacity, No Surrogate

What then should be done when something needs to be decided about what medically should be done? Some medical decisions need to be made soon or emergently and cannot always wait for the patient to regain capacity or for a surrogate to be found. These typically are trauma or emergency medicine situations and are common occurrences. Then the healthcare team utilizes the concept of implied consent to the standard of care, making decisions in the best interests of the patient. This might also be referred to as the standard patient model.

Excluding the concept of assent/dissent, which is important also, there are three different versions of informed consent involving legally competent patients. They are written consent, verbal consent, and implied consent. Implied consent is an important concept that can save patients' lives in an emergency while also potentially violating their right to autonomy and self-determination. Implied consent "refers to when a patient passively cooperates in a process without discussion or formal consent. The principles of good communication apply in these circumstances, and health professionals need to provide the patient with enough information to understand the procedure and why it is being done. Implied consent does not need to be documented in the clinical record." (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4005206/)

The Standard Patient Model

But what does it mean for something to be implied or assumed? It is in these situations that healthcare professionals use what we're calling the standard patient model. This is a legal fiction that assumes the mindset of the patient to be similar to what a normal, imagined patient would be.

Assume a patient presents to the emergency department with multiple gunshot wounds. The patient is in a trauma situation and unable to communicate. There is not enough time to find family or a surrogate decision maker. What should the physician do? Typically, the physician should treat the patient the same as a standard patient in these circumstances. The ED physician essentially asks what would a typical patient want if they came here with multiple gunshot wounds and in need of emergency medical treatment? It is safe to assume that most patients would consent to those medical interventions. This would be

using an implied consent and standard patient approach.

But ethical issues can arise when trying to treat all patients the same as a theoretical patient. For one, there is no such thing as a standard patient. Every patient should be seen as unique, as an individual that has rights and medical preferences that may differ from other patients even under similar circumstances. To group every patient and base them off a theoretical is a dehumanizing approach that limits our ability to connect with individual patients and provide them the medical care that they want more so than what we think they need. It is possible that a standard patient would decline something to which some other patient would consent. An example of this is a patient who is a devout Jehovah's Witness and presents to the ED in need of a blood transfusion. A standard patient would accept but this patient likely would refuse.

Communicate and Save Lives

Glyn Elwyn does not address the notion of standard patients, but references standards for obtaining informed consent as put forth by the British General Medical Council (GMC) back in 2008. Elwyn wrote:

> In the real world of rapid throughputs and turnaround times, consent is —and often has to be—assumed. . .. The new GMC guidance urges doctors to re-think their approach. It advocates the communication of risks; it advises what should be done when patients refuse treatment; and it notes changes in the law, including the new legal safeguards for patients who lack capacity to make their own decisions. It encourages doctors and patients to be actively engaged in discussions about investigations and treatment, to enable patients to make informed decisions that are tailored to their individual circumstances and beliefs. (https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2413338/)

But there also exists the realities of modern medicine, in particular emergency medicine. There is an old adage, "If you are going to err, err on the side of life." Combine this with the zebra principle: "When you hear hoofbeats, think horses, not zebras." These two standards for medical education and practice cohere with the concept of implied consent and standard patients. While there remain ethical concerns about the possibility of obscuring diversity and difference, those concerns are weighed against the value of life itself and the medical mandate to save lives when possible.

By Ryan Pferdehirt, D.Bioethics, HEC-C, Terry Rosell, DMin, PhD, and Marissa Hernandez.

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www.PracticalBioethics.org
1111 Main Street, Suite 500
Kansas City, MO, 64105
816-221-1100

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