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RESEARCH ARTICLE

LEGALITY OF CONSENT IN TODAY'S DENTAL PRACTICE

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ABSTRACT

Time has witness the past golden days when doctors were considered as God and treatment rendered by them was followed blindly. Nobody ever thought of blaming doctors even if some mishap or undesirable complication happens with the patient. Now in modern times, people have become conscious about their rights including right to know nature of the disease, the treatment options available and complications associated with or without treatment. Doctor-patient is trustworthy relationship where doctor is expected to reveal details about the disease; treatment rendered and takes the consent of the patient or their relatives before undertaking patient for the treatment. Thus this article aims to provide insight of legal aspect of consent in dental practice.

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INTRODUCTION

In the modern era of increased health awareness, health professionals were no more been regarded as life saviours. The doctor-patient relationship is supposed to be trust worthy relationship which is no longer been a healthy relationship due to negative publicity of doctors and increased incidence of malpractices by few doctors, the entire profession of health is unnecessarily blamed and the faith is replaced by suspicion. It must be remembered that, every patient has right to know the nature of disease, details of investigations and test prescribed, treatment options available and choice of treatment to be rendered along with their advantages and complications. Thus for any treatment, the operating doctor must get the consent from the patient or his close relative prior to initiation of any procedure including dental treatment.

With increasing general health awareness, the attitude of patients to get informed on every aspect of health care is prevalent not only in adults but also in children and young adults.¹ The ultimate concern for patient would be that they should to be treated as a human being i.e. as unique and individual person.² Thus, it is need of time for dentists to be well aware of the basis of the consent provided under the law in order to provide optimum dental care within the specified legal framework.³

Consent and its legal aspects in dentistry

Why consent is necessary?

Increasing general health awareness demands the patient's right know what would happen to his health if he undergoes the prescribed treatment. Patient has right to know and it's a duty of that doctor to make the patient aware about the nature of disease and treatment to be done. Thus to avoid legal hassles it becomes mandatory for the doctor to explain the patient and their relatives regarding the treatment suggested before undertaking the patient for therapeutic purpose.

Definition of consent

Consent: Section 13 of Indian Contract Act, 1872 defined consent as, "Two or more person are said to consent when they agree upon the same thing in the same sense."

Free Consent: Section 14 of Indian Contract Act, 1872 (ICA) defined free consent as, Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

In simple words, consent in medical practice means voluntary permission or quasi agreement given by patient to the respective doctor to carry out investigative and therapeutic procedures for the benefit of curing the illness of patient and rehabilitating patient's health.

Matters to be highlighted/ disclosed in obtaining valid the consent

Consent should include

- Diagnosis of the disease with its probable etiology.

- Nature of treatment to be carried out along with alternative treatment options available.
- Foreseeable risk and complications involved in each of the treatment option opted.
- Overall prognosis if treatment has been carried out and prognosis if treatment has not been carried out.
- It is duty of a dentist to disclose all these points to the patients so that patient may exercise his right to self determination about the proposed course of the treatment.^{4,5}

Who can give a valid consent?

1. Any person who is conscious and above 12 years of age provided under Section 88 and Section 90 of Indian Penal Code, 1860 (IPC) and 18 years of age provided under ICA i.e. major.
2. According to Section 11 of ICA, person is competent to contract who is of the age of majority according to the law to which he is subject i.e. 18 years of age, and who is sound mind and is not disqualified from contracting by any law to which he is subject.
3. Free consent defined in Section 14 of ICA - Consent is said to be free when it is not caused by coercion or undue influence or fraud or misrepresentation or mistake.

Invalid consent: Consent given by following person is considered as invalid consent.

1. According to Section 11 of ICA, person who is not competent to contract i.e. below 18 years of age.
2. Person with unsound mind due to mental capacity as in lunatic, drunken and under influence of intoxication.
3. When consent would have been given due to the existence of coercion, undue influence, fraud, misrepresentation, or mistake.
4. Consent given by person when its implications are not known to them.

Types of consent

1. Implied consent
2. Express consent
3. Informed consent
4. Proxy consent/ Substitute consent

Implied consent: It is also called as tacit consent. *Tacit* refers to something done or made in silence. A *tacit* understanding is manifested by the fact that no contradiction or objection is made and is thus inferred from the situation and the circumstances.

This is most common variety of consent in medical and dental practice. When patient approaches a doctor for curing of his illness implies that patient is agreed for medical examination in general sense. But this does not mean that he has consented to more complex medical procedures like inspection, palpation, radiographic examination or surgery.

In dentistry, Rowe described implied consent as, "By being in the chair at the dental surgery with mouths open a patient implies that they are there for dental treatment and continued in the past a dentist would undertake treatment as he or she saw fit, which the patient would accept without argument".⁶

Express consent

Anything other than implied consent is express consent which may be either oral or written. In medical practice, written consent is usually obtained for intensive or invasive procedures like rectal or vaginal examination, aspiration, diagnostic procedures such as radiography, CT scan, sonography, for surgical procedures etc. express written consent should be obtained.

In dentistry written consent is usually obtained for diagnostic procedures like radiograph, orthopantomogram (OPG), minor and major surgical procedures like root canal treatment, extraction, orthodontic treatment, crown preparations, maxillofacial fractures etc.

Informed consent

This type of consent has aroused as a result of the many litigatory actions through the conscious minds of patients in the recent years. Patients alleged that they did not understand the nature of disease and the medical procedure they consented. Thus informed consent should have all elements of valid consent.

Proxy consent/ Substitute consent

All above type of consent could take the shape of proxy consent in case of patients such as; parents or guardians consent of child or close relative in case of unconscious patient of mentally unsound patient.

When consent should be taken?

Usually in routine medical care the consent should be taken before each investigation, therapeutic or surgical procedure. It is a general and legal principle that the dentist, preferably the doctor providing treatment should obtain consent before starting treatment. The points to be remembered before starting any treatment are as follows:

1. Be assured that consent has been properly obtained before initiating the investigation or treatment.
2. When the patient voluntarily sits in the dental chair and opens their mouth, is supposed to be impliedly consented for dental examination.
3. Procedures requiring radiographs to be taken, the patient's express consent i.e. oral or written consent is required.
4. For treatment under local anaesthesia or sedation (intravenous or inhalation) patient's written consent is required.
5. Preferably take signature of one or two relatives of patients as witness on the same consent form.
6. When patient is above 12 years, dentist should take signature of both the patient and his parent on the consent form.
7. A signature on a consent form is the evidence that consent has been obtained but patient's signature on a consent form is secondary to the quality of communication and information given to and understood by the patient.
8. A consent form should not be altered once it has been signed by the patient and the witness.
9. In the course of treatment, dentist should perform only those procedures to which a patient has expressly consented unless there is a life saving emergency.

Language of consent: The consent should be preferably to be taken in the language which is well understood by the patient either local, national or in English language. So that it would offer substantial protection to the dentist against unwanted allegations and litigations.

When consent is not required?

1. Medical emergencies in dental office: To save the life is a prime objective of every health professional. When life threatening situation occurs in dental chair, the dentist should not wait for the consent and start emergency treatment immediately to save a patient's life.
2. Court order for oro-dental examination as in medico-legal case.

Foreseeable complications of non-obtaining the consent:^{7,8}

Two possible allegations are possible if the dentist did not obtain consent from patient:

Trespass to person and his privacy- The law of trespass regarding 'informed consent' is limited unless there is breach of morality and decency.

Negligence: Failure to provide information about the procedure and associated risks may amount to negligence as well as initiating therapeutic and treatment procedures without valid consent amounts to negligence in law of Tort.

Case law: *Parmley v. Parmley*⁹

The plaintiff sued both doctor and the dentist for damages because of unauthorized extraction of some of her teeth while she was under an anaesthetic for the purpose of the performance by the doctor of an operation for tonsillectomy without her consent. The dentist took third party proceedings against the doctor, claiming indemnity or contribution in respect of any liability found against him.

DISCUSSION

Medical profession is a noble profession and to save one life is a great deed of all. Doctor patient relationship is a trust based relationship. Hippocrates describes doctor and patient relationship as, "There are three factors in the practice of medicine: the disease, the patient, and the doctor. The doctor is the servant of science, and the patient must do what he can do to fight the disease with the assistance of the doctor." Every doctor is duty bound to cure patient's ailment and restore their health. But in the modern times this relationship is on the verge of death due to increased litigations, assault and negative publicity of doctors in mass media which lead to lack of respect towards health professionals. Patients considered themselves as consumers and doctors as service providers of health for the money.

Increased health and legal awareness and enactment of Consumer Protection Act (CPA) changed the scenario of health profession. Previously treatment given by doctors was followed with total faith in doctor. But nowadays treatment advised was suspected by patient and doctors were blamed unnecessarily. Patients have become conscious about their right to know everything about their disease, investigations and treatment advised and expected complications with reasons. Under such cases it becomes necessary for the doctor to explain all details about the procedure and treatment to the patient or his relatives. For this the doctor need to obtain the

consent from the patient or relatives before undertaking any diagnostic or therapeutic procedure.

Consent plays dual role in medical field. It acts as a permission to access the patient for examination and investigations. Similarly it provides a protection to the operating doctor against medico-legal litigation when patient alleged of negligence for consent. As consent must include all necessary details of patient's disease, treatment options, complications in the language best understood by the patient or their relatives; it acts as a valid proof for the dentist when patient alleged negligence base on not understanding contents of the consent.¹⁰

It is a need of time for every dentist to obtain consent before initiating any dental procedure. Obtaining the informed consent from patient may look awkward and time consuming. Some dentists believe in their patients and defer to take consent. But in reality, obtained consent would saves the dentist's many cumbersome hours in the court and lacks of rupees in legal fees on occurrence of any mishap. Thus dentist should inculcate a practice of obtaining a valid consent in his day to day dental practice.

CONCLUSION

Dentistry is an art and science where dentist treats patients from various strata of the society. In spite of best efforts of dentist mishaps might occur. Therefore, dentist must be prepared before hand to tackle such complications including medico-legal problems. It is important for dentists to obtain the consent before every examination or invasive procedure. Though doctor- patient relation is based on trust and friendship, some of the patient might have dissatisfaction and when things gone wrong that unhappy patient becomes a strong litigant in medico-legal case. A written and signed informed consent would be the only evidence proving that, occurred mishap was a foreseeable risk known by the dentist and accepted by the patient. Whatever may be the type of consent; no consent absolves the doctor of his duty towards patient nor provides absolute, privileged immunity against the negligence.

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