BRIEF COMMUNICATION

Informed consent: Do not be afraid

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Received 8 July 2014; received in revised form 17 August 2015; accepted 24 August 2015

KEYWORDS
doctor-patient partnership; doctor-patient relationship; informed consent; patient’s rights; professional obligation

Informed consent is the cornerstone of the doctor–patient relationship. At least this is how it is presented in theory. In practice, doctors struggle with their obligation to inform their patient before obtaining their approval prior to a medical intervention. In Taiwan, the culture is often mentioned to justify the doctor’s reluctance to speak openly with their patient. Invoking the importance of the family in the society, doctors tend to rely less on their patients and more on their relatives to make important decisions. Yet, the cultural argument for not seeking the patients’ informed consent sounds more like a mere excuse than the real cause of the difficulties doctors face today in obtaining their patients’ consent. This paper argues that today the doctors in Taiwan are mostly governed by the same fear that was the rule in the USA and Europe until the 1980s. It may be time for changing the paradigm, admitting that patients are able to handle even the most dramatic diagnosis. It seems also important to get away from the sterile opposition of doctor’s paternalism versus patient’s autonomy and to introduce a true partnership between doctors and patients.

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The theory of informed consent does not seem to fit well in the medical practice of Taiwan. As visiting professor at the National Tsing Hua University, Hsinchu, Taiwan in 2014, I had the opportunity to discuss the issue with many doctors and specialists in medical law. A scooter accident also forced me to experience the health care system as a patient. The outcome is not what I expected.

My hypothesis was that informed consent must be different compared to that in Europe or the USA. In Taiwan, the family plays a greater role in any decision making process. The patient’s autonomy is limited by the family participation in the patient–doctor relationship. For instance, it may be acceptable to hide a cancer diagnosis from a patient while informing her family.

All these proved to be true. It is a widely shared opinion that the culture of Taiwan justifies a different approach to informed consent, which is mainly considered as a Western invention imposed on physicians through law. However, the argument appeared to be an excuse rather than the real cause of the physicians’ difficulties in obtaining their patients’ consent. It is more a matter of misunderstanding, lack of training, and fear than a cultural problem.

The Medical Care Act and the Physician Act both require physicians “to inform the patient or the patient’s family of the status of the disease, treatment principles, treatment, medication, prognosis and possible unfavorable reactions”.

Conflicts of interest: The author has no conflicts of interest relevant to this article.

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http://dx.doi.org/10.1016/j.jfma.2015.08.013
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Please cite this article in press as: Sprumont D, Informed consent: Do not be afraid, Journal of the Formosan Medical Association (2015), http://dx.doi.org/10.1016/j.jfma.2015.08.013
The accent is on the hospitals’ and doctors’ obligation of informing patients or their family or relatives. Article 12-1 of the Physicians Act speaks exclusively about the duty of informing the patient or patient’s family, while Articles 63 and 64 of the Medical Care Act refer to informed consent but emphasize the duty of providing information by the medical care institutions, focus that is reinforced by Article 65. The fact is that, contrary to general belief, there is no general provision on informed consent in Taiwan legislation.

The most cited justification for asking for a patient’s informed consent in Taiwan is that it is a legal obligation. However, the law mostly underlines the doctors’ obligation to inform patients or their family or relatives. For a Swiss lawyer, the emphasis on the family or relatives is puzzling, as they should be informed only if the patient is unconscious or unable to consent on his own. This is where the cultural argument is crucial. In Taiwan, doctors sometimes inform the family as a priority if the individual’s autonomy is perceived as limited by the dominant family role in everyone’s life. Under certain circumstances, it may even be accepted that doctors obtain consent from the family even though the patient is not incompetent.

However, no one I spoke to wished that their family decides for them. In general, respondents insisted that it was their own health that was at stake and that they intended to exercise their autonomy whenever possible. Advice from the family was solicited as support for the patient to build his own opinion not as a substituted consent. My personal experience in Taiwan is that patients, when properly informed about their rights, are willing to use them.

Doctors in Taiwan tend to repeat similar arguments to those used in the USA and in Europe before informed consent became more widely accepted in the 1980s: patients cannot understand, patients do not want to be informed, and patients are unable to cope with dramatic diagnoses. This contradicts numerous studies demonstrating that patients are more able to cope with their situation compared to their doctors or their families.

Informed consent is not primarily a legal obligation of the doctors, it is a patient right. The rule of informed consent is based on the patient’s autonomy and personal freedom. However, there is no use in opposing a doctor’s paternalism with patients’ autonomy. The patient needs the doctor and the opposite also is true. It seems more fruitful to promote a true partnership between doctors and patients. Not only does it acknowledge the doctors’ scientific and medical authority, but it encourages patients’ compliance.

It appears to be urgent to move away from a legalistic approach to informed consent that reduces it to a mere legal obligation for the physicians. This means that physicians stop asking their patients’ consent in fear of litigation. Fear is never a good adviser. Do not ask your patient’s consent because you worry that you may be sued. Ask him out of respect, as you also expect that the patient shows you respect. Doctors should learn how to better communicate, but also know more about the patients’ attitudes and capacities. Meanwhile, patients should be educated in improving their health and medical literacy. That is the basis for a trustworthy relationship.

Acknowledgments

The author wishes to thank Professor Fan Chien Te, director of the Bioethics and Law Center of the Institute of Law for Science and Technology from the National Tsing Hua University, for his support. Thanks also go to the many colleagues in Taiwan for the heated discussion we had on informed consent, as well as their critical and constructive comments on this paper, in particular Dr Han-Ting Hu and her colleagues from the Koo Foundation Sun Yat-Sen Cancer Center, Professor Ray Wenmay and Professor Yang Hsiu-I from Yan-Ming University, and Professor Chen Chung-Lin from National Tsing Hua University. This paper was written, in part, with the financial support of the National Tsing Hua University.