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## IMPORTANCE AND VALIDITY OF PATIENT CONSENT FOR DENTAL PROCEDURES

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### **Abstract:**

The word consent was derived from the Latin word *consentire* which means feeling together, or in simple words agree or to give your permission. It is a type of agreement between two or more parties on the matter of concern or a Clinical procedure. In the medical field consent plays an important role in protecting rights of the patient's and the autonomy. The Consent is a fundamental and established principle in the Indian Law. Every person has the right to agree or disagree for a particular treatment. The dentists being a health professional are also responsible for obtaining proper consent prior to any kind of dental procedures. Doing examination for diagnosis and treatment plan also needs a consent from the patient. The aim of this article is to provide insight knowledge about the consent, its types and about its validity.

**Keywords:** patient, Consent, Dentist, Medicolegal Aspects, Autonomy.

### **Introduction**

In the ancient times the relationship between the physician and the patients was consolidated. It was mainly the responsibility of the doctor to do the best for the patient when performing any treatment, and on the other hand it was the duty of the patient to trust the doctor's decisions and the interventions. The Hippocratic Oath stuck to the professional responsibility and was more religious and the morale types.<sup>1</sup> with the passage of time and advancements made in the fields of medicine, the doctor-patient relationship has changed tremendously as the health providers are now considered as the service providers.<sup>2</sup>

### **Autonomy**

In the present era of the medicine it is the fundamental right of the patient to know what type of treatment the physician is going to provide. It is considered as the right of patient to choose the best treatment. According to medical professionalism and ethics this termed as the Autonomy which means respect to the patient's choice/decision.<sup>3</sup> The concept of autonomy is thought to be the main reason for the origin of the consent.

### **Consent:**

Consent is a voluntary acceptance or agreement between two parties say doctor and the patient of what is planned to be done for the patient in the language patient understands. The Consent is a

fundamental and established principle in the Indian Law. Every person has the right to know what shall be done to his body during the treatment and its consequences with regards to advantages, disadvantages and complications.

The word consent was derived from the Latin word *consentire* which means feeling together hence to agree/to give permission. It is the agreement between the two or more parties on the matter of concern. In the medical field consent plays an important role in protecting rights of the patient's and the autonomy. It provides the legal platform for the patients as it does not allow the physicians/doctors to treat the patient in any ways without the prior consent from the patient.<sup>4</sup> Therefore it is the moral obligations of all the health professionals including the dentists to obtain the consent from each and every patient prior to any kind of dental procedures.

Self-defence of body (under IPC Section 96 to 102, 104 and 106) provides right to the protection of bodily integrity against invasion by other.<sup>5</sup>

The consent represents the fundamental right of the individual towards his/her autonomy and the self-determination of the individual. Thus, if a health practitioner is attempting to do some procedures without the consent of the patient the service provider will be liable under both tort and criminal offense. Tort is a civil wrong for which the aggrieved party may seek compensation from the wrong doer. Different types of consents are laid down and the same can be used for the different clinical procedures to be performed on the patients.<sup>6</sup>

### **Who can give the consent?**

There are two schools of thoughts according to the Indian legal system :

1. Section.90 of the Indian Penal Code of 186 states that, "Consent by intoxicated person, person of unsound mind or a person below twelve years of age is invalid."
2. According to Sec. 11 of the Indian Contract Act of 1872 - a competent person of sound mind who has attained the age of majority of 18 years (according to the Indian Majority Act of 1875) can legally enter into a contract.

The above two sections have contraindicative statements which might further lead to the complications. In general, any person above 18 years of age has the autonomy to sign the consent for the treatment he or she wants. In such scenario the consent from parents or guardian will be considered invalid.

### **Types of consent:**

#### **Implied Consent:**

It is a presumable type of consent. It implies that the patient has reported to the physician for certain sort of procedure such as the oral examination, case history or the routine physical examination such as checking pulse, blood pressure or respiratory rate. It is self-understood for

both the doctor and the patient that these are the necessary procedures to be done for the patient's benefit. The implied consent is considered legally equally effective.<sup>6</sup>

### **Expressed Consent (Tacit Consent):**

Expressed consent is mainly used for carrying out the investigations or the diagnostic procedures which are beyond the routine physical examination. The expressed consent is divided into two types

1. **Written Expressed Consent:** When the expressed consent is obtained in the written format then it is considered as written expressed consent. The written expressed consent is obtained for major diagnostic procedures, use of anaesthesia, for surgical procedures, intimate examinations and in medico-legal cases. It is also compulsory to obtain written consent in the cases of use of narcotic drugs, newer medications and anaesthetic agents. It has to be explained to the patient in the language he or she understands. This is considered as the most effective and safest method of consent or agreement between the doctor and the patient.
2. **Oral Expressed Consent:** when the consent is obtained verbally in the presence of a disinterested party for some minor examination or therapeutic procedure then it is called as the Verbal/oral expressed Consent. The verbal consent is considered as equally valid to the written expressed consent when it is properly witnessed.<sup>4</sup>

### **Informed Consent:**

Informed consent has different context in different things. The simplest meaning of the informed consent is that the authorization is informed which means the patient has given the knowledge of diagnosis, options of treatments, risks of the treatment and the benefits too and the patient understands them. It should be documented thoroughly using an electronic medical record, procedure-specific consent forms,

### **Proxy Consent:**

This type of consent is utilized when the patient is considered as unfit to give the consent which may be because of age less than 18 years, or the patient is mentally not stable and can not take decision what is good or bad to his or her body. In such circumstances the consent is obtained from his/her parents or close relatives.<sup>7</sup>

### **Emergency Consent:**

This type of consent is obtained in the cases of life-threatening emergencies. This is usually in case of life-threatening emergencies or complications. In such situation the person who brought patient or even the doctor or the hospital administration can take the decision as it is an emergency situation in order to save the life of a patient<sup>7</sup>

### **Blanket Consent:**

This is the most common type of the consent which is obtained by almost all the clinics and hospitals. It is a consent taken on a printed form and most of the things which a dentist/clinician is going to perform is mentioned on a form, but there is no specific information available about the various treatment procedures and complications. This consent is considered legally inadequate for the any interventional procedures or the procedures involving high risk.<sup>4</sup>

### **When consent is considered as not valid?**

If the consent is obtained under the following situations/circumstances, then it is considered as invalid<sup>4,7</sup>

1. When it is obtained from the minors(<18yrs)
2. If it is given by a person of unsound mind or with severe mental illness.
3. Given under fear, fraud or misrepresentation of facts
4. Person under the influence of alcohol

### **Situations where consent may not be obtained:**

Though consent is an essential aspect in a doctor-patient relationship it need not be obtained in some situations:<sup>7</sup> like in the event of life-threatening Medical Emergencies. Or In case of a court order or request of the police.

### **Validity of the consent:**

As per the legal documentation there is no time limit given for the invalidity of the consent, but it can be considered invalid if<sup>7</sup>

1. Patient wants to withdraw it on improvement or deterioration of the condition
2. If the patient wants to choose some other newer treatment plan
3. Due to disease progression, the treatment choice has changed from cure to palliation.

### **Conclusion:**

Consent for every clinical procedure is important as it is right of the patient before they seek any treatment from the doctor to choose what is good or bad to them. The consent serves both the purposes, means it protects the patient's autonomy & self-determination and it also provides a legal documentation for the medico-legal purpose. The choice of the consent plays important role in the validity of the consent.

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