The Gray Areas of Informed Consent

Medical professionals are required to make sure patients are fully informed about a procedure in order to consent to it. In the United States, failure to obtain informed consent prior to performing a medical procedure is considered negligence. However, if you think back to the last time you had a shot or had your blood drawn, you probably did not provide explicit consent to the procedures. For a broad range of procedures, the patient gives his implied consent and the doctor assumes that the patient understands the risks and benefits of the procedure. In certain cases, this assumption can make a doctor liable for malpractice.

In 1957, Paul Gebhard first used the term ''informed consent" for a trial against Stanford University where a patient underwent an aortography without knowing the risks of the procedure and ended up with paralyzed legs. According to the University of Washington School of Medicine, current laws suggest that physicians must consider three factors when informing the patient. The first is what would a typical physician say about a particular procedure. The second is what would an average patient need to know to make an informed indecision. The third is what would this particular patient need to know to make an informed decision. Thus, there is always a subjective element in deciding what is appropriate to include in a dialogue between the physician and the patient, but laws vary state by state.

Generally, patients should be fully informed about the nature of the procedure, reasonable alternatives, risks, benefits, and uncertainties before a patient can give an informed consent. Exceptions come up when patients are unable to provide consent, such as when patients are under the influence of drugs, mentally retarded, deprived of sleep, underage, or in a coma. In these cases, a doctor must still inform the surrogate who will make the decision. The only instance where physicians can assume consent is in emergency situations, but a patient's presence in the hospital ward, ICU or clinic does not imply consent to all suggested treatments.

While truly informed consent requires the patient to comprehend the nature of the procedure instead of just being presented with the information, a signed legal release form for a medical procedure is evidence enough in the courts to indicate informed consent. Unless it can be proved that the patient was given misinformation. Also relevant, in order to prove negligence, causation must be determined: that additional information would have led the patient to a different decision concerning his/her medical care.

Interestingly, there is no federal law that requires medical providers to obtain informed consent for administering vaccines. There are no set standards for deciding if a person is competent enough to give informed consent, and a physician often extracts consent out of the subtleties of human communication. Most of the time, as in the cases of drawing blood or giving shots, the physician assumes correctly, but most of the time, consent cannot be assumed. If a surgeon notices cancerous growths on an organ or tissue unrelated to the current surgery, he cannot take the initiative to remove the cancerous tissue and must allow the patient to make that decision for him/herself.