STANDARDS OF CONSENT AND PROTECTING PATIENT AUTONOMY

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PRESENTATION OUTLINE

• Overview of PhD

• GMC 2008 Consent Guidance: Role of trust, autonomy and paternalism

• Next Steps
PHD OVERVIEW

• Examines informed consent to surgery and understandings of informed consent underpinning standards of disclosure across medical ethics, medical law and medical professional regulation.

• Different concepts of autonomy – no agreed understanding

• Exploring how each area conceptualises autonomy and how this can inform standards of disclosure.

• More than autonomy at play
GMC CONSENT GUIDANCE (2008)

- Focusing on provisions relevant to what information should be disclosed and how.
- Autonomy, paternalism and trust all feature.
INFORMED CONSENT AND TRUST (1)

• For the GMC, trust is the foundation of consent:

‘Successful relationships between doctors and patients depend on trust [...] to establish that trust you must respect patient’s autonomy [...]’

Seeking Patient’s Consent: The Ethical Considerations (1998) [1]
INFORMED CONSENT AND TRUST (2)

• 2008 Guidance: Trust remains important:

‘For a relationship between a doctor and patient to be effective, it should be a partnership based on openness, trust and good communication’

Working in partnership includes sharing information with patients to help them to make their own decisions.

INFORMED CONSENT AND AUTONOMY

• Not defined in 2008 Guidance.
• Distinction between principled autonomy and individual autonomy
• 2008 Guidance focuses on individual autonomy.
• Faden and Beauchamp - 3 conditions:
  (1) Understanding;
  (2) Freedom from Controlling Influences;
  (3) Intentionality
INDIVIDUAL AUTONOMY: UNDERSTANDING

• ‘Share information in a way the patient can understand and, whenever possible, in a place and time when they are best able to understand and retain it.’ [18(a)]
• ‘Check whether patients have understood the information they have been given [...]’ [11]
• ‘Use clear, simple and consistent language’ [34]
• Use additional measures to ensure understanding e.g. written material, visual aids, advocates, interpreters etc. [20, 22]

INDIVIDUAL AUTONOMY: FREEDOM FROM CONTROLLING INFLUENCES

• External sources may influence decision-making but should not control it: Faden and Beauchamp
• Safeguards to control doctor’s influence.
• ‘Must give patients information they want or need about’ e.g. treatment options, risks, benefits [9]
• Don’t make assumptions about info patients want or need [8]
• Check if more info required [11]
• Answer questions fully and honestly [12]

PATERNALISM

- Doctors may withhold information if they believe its disclosure ‘would cause the patient serious harm’. This means ‘more than that the patient might become upset or decide to refuse treatment’. [16]


- Meets Dworkin’s definition of paternalism but Beauchamp and Childress say ‘justified’.
- Conflicts with autonomy. Consistent with trust?
SUMMARY

• In medical professional regulation, trust, rather than autonomy is the foundation of standards governing informed consent.

• However, autonomy still features strongly, focusing upon individual values.

• Paternalism still features through the therapeutic exception. This is inconsistent with autonomy but could be seen as consistent with trust.
NEXT STEPS

• Conduct a similar review of legal standards as developed in case law.

• Analysis of court judgements and fitness to practice decisions applying the legal and regulatory standards and analysis of concepts of autonomy, and other notions, underpinning application of the standards.

• Bring findings together to identify common themes