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Informed Consent and Respect for Individual Autonomy: A Quandary in 2018

Objectives

Attendees will better understand their legal and ethical rights concerning medical care and those that provide it.

Using examples, attendees will recognize how information and consent is often manipulated.

To leave attendees better suited to assist and advocate in the decision making process for themselves and loved ones.

Q & A to follow.
informed consent

• 1. permission granted in the knowledge of the possible consequences, typically that which is given by a patient to a doctor for treatment with full knowledge of the possible risks and benefits.
quandary

quan·da·ry ˈkwänd(ə)rē/

• noun: quandary; plural noun: quandaries

1. a state of perplexity or uncertainty over what to do in a difficult situation.
informed consent quandary

• The American Medical Association (AMA) code of ethics states, “Rational, informed patients should not be expected to act uniformly, even under similar circumstances, in agreeing to or refusing treatment.”
“The patient’s right of self-decision can be effectively exercised only if the patient possesses enough information to enable an informed choice. The patient should make his or her own determination about treatment.”

“The physician has an ethical obligation to help the patient make choices from among the therapeutic alternatives consistent with good medical practice. Informed consent is a basic policy in both ethics and law that physicians must honor.”

AMA Code of Ethics, Section E-8.08 Informed Consent
Another quandary: What is “Good Medical Practice” and who decides? (A setup for conflict?)

- Community Standards?
- Practitioners?
- Hospital Risk Managers?
- National Organizations?
- Malpractice Attorneys?
- Patients?
- Insurance Companies?
- The Government?
Ethics & Decision Making

- Beneficence
- Fiduciary Duty

“Conflicts of interest should be resolved in accordance with the best interest of the patient, respecting a woman’s autonomy to make health care decisions.”

ACOG Code of Professional Ethics
Shared decision making is when health professionals and patients work together. This puts people at the centre of decisions about their own treatment and care. During shared decision making, it's important that:
• care or treatment options are fully explored, along with their risks and benefits
• different choices available to the patient are discussed
• a decision is reached together with a health and social care professional.

NICE National Institute for Health and Care Excellence
Shared Decision Making is a reassuring phrase often used in the inform and advise process of consent.

However, this is not really an accurate term as time constraints and communication skills are often limiting. (Unless there are limited resources. i.e. skilled breech practitioner)

Shared decision making is subservient to informed consent and refusal!

Courtesy of Hermine Hayes-Klein
http://www.humanrightsinchildbirth.org/rights/
“Before a medical professional can legally touch your body there must be a process of consent that is freely given.”

3 Prongs to Consent

1) Inform (Objective)
2) Advise (Subjective)
3) Support (Whether for or against advice)
informed consent

• **True**: Full assessment of risks and benefits of all options. (Is this possible?)

• **Selective**: Limiting consent to those risks and benefits which can reasonably be expected to occur. (Reality)

• **Skewed**: Bias inserted to give selective risks and benefits in order to funnel a person down a specific path. (Too Common)
Some Real Life Examples:

Vaginal birth after Cesarean delivery

Versus Cesarean section again
Example 1: Vaginal Birth After Cesarean (VBAC) vs VBAC Bans
A successful VBAC carries less risk to mother and baby than an “elective” repeat c/section and......

70-80% of attempted TOLAC will be successful

NIH VBAC Consensus Statement, March 8-10, 2010

Therefore......Hospitals that prohibit TOLAC are forcing 70-80% of women to undergo a surgery than puts them and their babies at greater risk of injury.

(Are they being given true informed consent?)
“The use of coercion is not only ethically impermissible but also medically inadvisable because of the realities of prognostic uncertainty and the limitations of medical knowledge. As such, it is never acceptable for obstetrician–gynecologists to attempt to influence patients toward a clinical decision using coercion.”
informed refusal

- Patient's decision to decline recommended treatment after all options, risks, and benefits have been thoroughly explained.
- What about Uninformed Refusal?
Example 2:
What’s the deal with Breech Birth anyway?

Not the norm but not abnormal?
It’s a Reasonable Option

ACOG Committee Opinion
Number 340, July 2006  (Reaffirmed 2010)

Experience of the practitioner

Desire of the mother

Strict protocol guidelines

True informed consent of risk & benefits of both vaginal delivery and cesarean section.
So why are we only told Breech = Danger?
The Skewing of Consent

- Economics
- Expediency
- Litigation Mitigation
- Ego

- Much of the skewing of consent really boils down to: FEAR!!!!
Knowledge and good communication are the keys to overcoming Fear. Our patients have the absolute right of informed consent and informed refusal. Let's stop projecting our fears and bias on them!

“I walked away from Myles' birth wiser, empowered, more in love with my husband and with myself.” Anna
Example 3: Konovalova v. Russia
Landmark Case on Informed Consent from the European Court of Human Rights

• Term pregnancy, prodromal labor, delay on induction. Given booklet on teaching hospital policies in St. Petersburg, Russia

• Objected to the presence of medical students at birth. Did not sign written consent to allow.
Konovalova v. Russia

- Augmented & delivered uneventfully the next day. Medical students present and participated.
- Patient sued for pain & suffering in St. Petersburg District Court.
- The Court ruled medical treatment adequate, written consent for presence of medical students not required despite legal precedent.

- Appeal filed: European Court of Human Rights
  Article 5: “An intervention in the health field may only be carried out after the person concerned has given free and informed consent to it...The person may freely withdraw consent at any time.”
Claims for delay of care and mismanagement were denied, however.....

Judgement was awarded for violation of Article 8, the concept of “private life”, which encompasses the physical integrity of a person, even if it is deemed of minor importance.
The Ideal

• Informed consent to medical treatment is fundamental in both ethics and law.
• Patients have the right to receive information and ask questions about recommended treatments so that they can make well-considered decisions about care.
• Successful communication in the patient-physician relationship fosters trust and supports shared decision making.
As doctors and hospitals continue to limit choices and skew consenting for reasons of expediency, economics and litigation-mitigation women are going to seek out other reasonable options. The ridiculing of home birth, the banning of VBAC, twin and Breech deliveries and the failure to train future practitioners is cowardly and unethical!
A last word: The term “obstetric violence” appears nowhere in US law, but other countries like Venezuela and Argentina are beginning to define it as a crime against people giving birth.
Thank you for your attention

Any Questions?


— Dalai Lama
Informed Consent: A Quandary in 2018

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May 4th, 2018

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informed decision

• Also in 2011, the American College of Obstetricians and Gynecologists (ACOG) stated that “it respects the right of a woman to make a medically informed decision about delivery.”
INFORMED CONSENT & REFUSAL

“YES” IS NOT MEANINGFUL UNLESS YOU ALSO HAVE THE RIGHT TO SAY “NO.”

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The Ideal

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Ego = \frac{1}{\text{Knowledge}}

“More the Knowledge
Lesser the Ego,
Lesser the Knowledge
More the Ego...”

- Albert Einstein.

Return to Common Sense

To argue with a person who has renounced the use of reason is like administering medicine to the dead.

- Thomas Paine
In order for an inductive logical argument to sustain itself it must be built on reliable observations. It gives probability but never certainty.
• If at any step in the creation of a **deductive** logical argument a fact or component of that argument is false, reveals bias or exhibits a leap of faith then the entire subsequent premise falls under a veil of suspicion.
The following is inductive:
• *Most* animals are furry.
• Rover is an animal.
• Therefore, Rover is probably furry

The following is deductive:
• *All* animals are furry.
• Rover is an animal.
• Therefore, Rover is furry.

All oranges are fruits
All fruits grow on trees.....
Informed Consent: A Quandary in 2013

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September 7\textsuperscript{th}, 2013

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“What is fear but voices airy, whispering harm where harm is not”

William Wordsworth (1770-1850)
ACOG Practice Bulletin #184 (2017) on VBAC
Summary of Evidence

• **Level A**
  - Most women should be offered a TOLAC
  - Epidurals are OK
  - Misoprostol is contraindicated

• **Level B**
  - TOLAC2C is a reasonable option
  - VBAC attempt with Twins is appropriate
  - External Version is not contraindicated
  - Labor induction remains an option
  - TOLAC with unknown scar OK

Additions from #184
• Previous classical c/sec or transfundal surgery not candidate
• Continuous FHR monitoring recommended
ACOG Practice Bulletin #184 (2017) on VBAC
Summary of Evidence

• **Level C**

• After counseling, the ultimate decision to undergo TOLAC or a repeat cesarean delivery should be made by the patient in consultation with her obstetrician or obstetric care provider.

• Women attempting TOLAC should be cared for in a level 1 center (ie, one that can provide basic care) or higher.

• Because of the unpredictability of complications requiring emergency medical care, home birth is contraindicated for women undergoing TOLAC.