

Dilemma when an Admitted Patient Refuses Further Medical/Surgical Care by Treating Doctor and Hospital: The Doctrine of Informed Refusal Evoked

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Abstract

When a doctor or hospital enters in a contract of treating a patient with informed consent and due to whatever may be the reason s/he or his/her legal heirs do not want to continue further treatment with that doctor or hospital and want a discharge even in a life threatening condition of patient, the Doctrine of Informed Refusal is evoked. The role of doctor to treat his patient starts with valid consent and gets terminated with the valid refusal, hence keeping in view the right of the patient or his/her legal heirs to take autonomous decision for the treatment, the doctor has no right rather than to accept their choice and it must be documented as Informed Refusal or denial for treatment with one or two independent witnesses. The patient should be discharged with appropriate medical advice which may be Intravenous drip, use of Ventilator and assistance of doctor in safe transport of patient by road or air to the place or hospital of their choice.

Key words: Patient; Consent; Informed Refusal.

Introduction

The doctor can only treat a patient after entering into a contract under section 13 of Indian Contract Act after an informed oral, implied or written consent. Consent is not valid if it is obtained in a blanket manner; it must be clearly mentioned and informed in written contract form. This consent can be terminated by patient and he can refuse for further treatment. The doctors are answerable under code of conduct from the Medical Council, Civil Court, Consumer Court as well as Criminal Court. The consent for treatment by a patient to treating doctor is defined under Section 13 of Indian Contract Act 1872 which states that "Two or more persons are said to be consented when they agree upon the same thing in the same sense" and as per Section 14 consent is said to be free "when it is not caused by coercion or undue influence or fraud or

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misinterpretation or mistake." The various sections of Indian Penal Code associated with Consent are:

Section 87 Indian Penal Code: A person above 18 years can give valid consent to suffer any harm which may result from an act not intended or not known to cause death or grievous hurt. For medical purpose a patient suffering from a disease which can cause death has full right to give valid consent for an operation which has risks involved with it.

Section 88 Indian Penal Code: A person can give valid consent to suffer any harm which may result from an act not intended or not known to cause death, done in good faith and for its benefit. For medical purpose if a doctor treats or operates a patient in good faith which may involve risks, in such cases doctor cannot be held responsible in case of death of patient.

Section 89 Indian Penal Code: Consent of the parent or guardian should be taken in case the patient is a child below the age of 12 years or insane and cannot give valid consent to suffer any harm which may result from an act done in good faith for his benefit.

Section 90 Indian Penal Code: Consent obtained by force, fear or fraud is not valid.

Section 91 Indian Penal Code: Consent given for an act which has no legal sanction (e.g. criminal abortion) is not valid whether or not the act causes injury to the consenting party.

Section 92 Indian Penal Code: In an emergency in which the patient is likely to die, lose a limb or suffer serious bodily harm in the absence of an operation, the surgeon is justified in performing such operations even without consent if the patient is unconscious or otherwise unable to give valid consent. As per the act, a person cannot be held liable for an act done in good faith (e.g. surgical operation) even if it was done without consent provided the person was incapable of giving consent (patient in coma) and consent could not be obtained in time e.g. children admitted to hospital with fatal injuries whose parent or guardian is not at hand.¹

Section 53 Criminal Procedure Code: When a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonable for that purpose. The medical examination is not only restricted to external examination and if required internal examination may be done. Whenever the person of a female is to be examined under this section, the examination shall be made only by, or under the supervision of, a female registered medical practitioner. The doctor under Section 53 of Criminal Procedure Code if required may collect sample of blood, saliva, urine, hair, nails, semen, swab etc for further laboratory examination.² In medical practice Consent is mandatory before proceeding for treatment of the patient. A doctor cannot proceed for basic systemic examination, diagnostic and therapeutic procedure without consent of patient. In an Outdoor patient, Consent is implied when a person approaches the doctor at his clinic for consultation, but for procedures of systemic examination oral consent is must and for more invasive diagnostic and treatment procedures, an informed consent in writing has to be taken mandatorily. However, it is the right of the patient to withdraw his/her consent for treatment or procedure at anytime of the consultation even under critical circumstances and against medical advice. Under such condition, doctrine of informed refusal plays

a significant role. The doctor fraternity as well as corporate hospitals is well aware of the doctrine of Informed Written Consent but a larger portion is still unaware about the duty of doctor in case of Informed Refusal by patient or their legal heirs. However, the Doctrine of Informed Refusal is not applicable to any accused person in legal custody as per Section 53 Criminal Procedure Code of India. Such person can be examined even without his consent and against his will on the request of custodian.^{3,4}

What is Doctrine of Informed refusal?

Informed Refusal is reverse of Informed Consent, which has significantly received less medical and legal importance as compared to Informed Consent. Just as the patient has right to consent, he also has the right to refuse the treatment at any level even though the refusal may deteriorate his/her health condition. Similar to Informed Consent, it gives due respect to the final decision of the patient without putting any blame of negligence on the treating doctor. However, while giving Informed Refusal, the patient has to be in a state of *compos mentis* to give free informed consent or refusal i.e. not to be of unsound mind, intoxicated, drunk, semi-conscious etc and above 12 years of age to give valid consent. Under such circumstances next of kin or guardian has the authority to consent or refuse. Just like informed consent, informed refusal is much more than mere documentary signatures of the patient for refusal. It is the decision of the patient which depends upon a thorough consultation and discussion between the patient and his doctor regarding all the benefits, risks involved in the procedure and the consequences of opting out of the treatment. Unfortunately the concept of informed refusal is yet to be introduced formally in the medical practice; documentation of patient's denial to give consent for a procedure against medical advice is insufficient and needs a proper documentation with signatures of patient and witness. If the patient is incompetent to consent or refuse, the next of kin has the role for decision making. In case a doctor knows that the refusal for treatment is not for welfare of the patient then he must take following measures:

- i. Ask the patient to reconsider his decision under informed explanation, if he is conscious.
- ii. Ask the family members or guardians to improvise the decision about patient, under informed explanation, if he is unconscious or non-*compos mentis*.

- iii. Inform the patient that he can come for treatment at any stage if he desires.
- iv. Give him option for transportation or referral with information regarding the risks involved during such transportation.
- v. In case of a person get admitted with his consent and become unconscious and non-compos mentis, who require further medical and surgical intervention to save his life and the doctor understands that the person will die if treatment is discontinued. In such cases, the Informed Refusal should be documented in writing and the police should be informed before discharge.
- vi. In such cases, the Informed Refusal should also be signed by witnesses, and preferably police official to avoid any future legal complications. Such documentation is recommended to doctors to avoid any criminal or civil litigation.⁵

Informed Refusal and Ethical Issues

It is the right and authority of a patient with decision making capacity to withdraw or refuse treatment at his/her own will, but there are certain situations where a treating doctor has full knowledge about the consequences and is in an ethical dilemma for the patient's choice. Sometimes the refusal means death or disability for a lifetime which comes against the ethics of a medical practitioner to provide medical care for his patient. In case when the patient is a child less than 12 years of age, the right of decision is with the parents or guardians who may deny or refuse a life saving medical intervention. Also there are certain circumstances where a previously compos mentis patient who has given informed consent for treatment becomes non compos mentis unable to provide informed consent for further surgical and medical interventions, under such situations their legal heirs come into action for the decision making on part of patient to continue or discontinue treatment. Legal heir may refuse to continue treatment due to financial restraint, lack of wisdom to understand the gravity of medical treatment or some malicious intentions. Such situations are not only stressful for the parents/legal heir but also for the doctor who knows the consequences could result in mortality or morbidity and still bound to withhold medical care.^{6,7} In case a doctor suspects some decisive behavior on part of legal heirs to discontinue treatment despite financial stability, he may inform police regarding the same, who in turn

with the investigations and their involvement may counsel the heirs for continuation of the treatment.

Case Example

In 2017, a neonate was diagnosed of trachea-esophageal fistula and anorectal malformation and atresia at birth at AIIMS, New Delhi. The child was admitted to Neonatal Intensive Care Unit (NICU) for treatment and the pediatric surgery team planned for urgent repair of the defects. All the consequences of the planned intervention were informed to legal guardians in their vernacular language in details; however despite repeated counseling by the treating doctors parents refused consent for any surgical intervention. A Medical Board was formed to deal with such a sensitive case and the proceeding of Medical Board AIIMS was:

1. Any Medical or Surgical intervention on child below 12 years of age cannot be done by the treating doctors in absence of a valid consent from the legal guardians of the child.
2. All the consequences of the planned intervention should be informed to the legal guardians in a language they can understand by the treating doctors.
3. If the legal guardians still decide against the planned intervention, the same should be taken in writing in the format for "Informed Refusal" in the presence of two witnesses by the treating doctors.
4. Further required primary treatment has been given, the patient may be discharged. Parents to arrange a portable ventilator and ambulance with life support measures for safe transportation of the patient to the place decided by the parents.

Status of Informed Refusal in other countries

Informed refusal is a well established term and practiced routinely in most of the Western countries including United States of America, United Kingdom and Canada.⁸ The patient's decision to refuse treatment is given the utmost value both ethically and legally. In United Kingdom and United States of America, the competent person has the right to refuse any medical treatment and the competent person includes a person above age of majority with sound mind. However, in Canada the Supreme Court allows informed refusal of medication even by a diagnosed patient of psychiatric disorder.^{9,10}

Discussion

Though Informed Consent is popular among the medical practitioners owing to medicolegal obligation and consequence of legal litigation, informed refusal still remains a relatively new concept among the medical practitioners of the country. Informed refusal is as much as important as informed consent, and needs to be well documented. But it is not limited to documentation only, as all the aspects of the treatment or the procedure which patient tends to refuse should be discussed in details. It is the right of the patient to refuse to give consent for a treatment after knowing all the benefits, risks and the consequences of opting out of the treatment. A physician cannot force a treatment upon the patient and must give due respect to the autonomous decision of the patient. In the present scenario, an informed consent is often taken from the patient or next of kin before proceeding for treatment or procedure but informed refusal is neither taken nor documented, it could be said that it more or less a verbal refusal on the part of patient which does not

have any legal proof. Such situations lead to law suits against the doctor especially for terminally ill patient. In case the patient is competent enough to make an independent decision of refusal without any interference, the same should be well documented in the designated format of Informed Refusal which should bear details of the procedure (its risks, benefits and consequences of refusal) and signature of patient and two unrelated witnesses like attendants and relatives of any patient admitted.

In case the patient is not in a condition to make decision, the next of kin plays the part of decision making and the same steps should be followed for registration of informed refusal. Even if the doctor knows that the refusal may have deleterious effect on the health of the patient, is bound to hold his services even on humanitarian ground following informed refusal by the patient. Forced treatment or procedure could lead to charges of battery against the doctor and s/he will be bound to face negligence charges. Informed refusal is not just limited to the clinical medical practice but the medicolegal practice also, e.g. a patient with history of physical

Name and Address of the Hospital Format of Informed Refusal

Patient Name _____

S/O, D/O, W/O _____

Age/Sex _____

R/O _____

UHID No. / Indoor Patient No. / File no. _____

Department _____

My physician/surgeon/treating doctor, AIIMS _____, has recommended for myself/my ward the following test/procedure/treatment _____

S/he explained to me that the potential benefits of the test/procedure/treatment include: _____

And the risks of the test/procedure/treatment are: _____

The physician has explained the following risks associated with not following through with the recommended test/procedure/treatment. They include, but are not limited to: _____

All the risks and benefits have been explained to me in my vernacular language and despite doctor's recommendation; I am declining to consent to this medical treatment, test or procedure for myself/my ward.

By signing this document, I acknowledge that (1) My/my ward's Medical condition has been evaluated and explained to me by my physician who has recommended treatment as stated above, (2) My doctor has explained to me the potential benefits of such treatment and the risks associated with it, (3) My doctor has explained to me the possible risks of not following through with the recommended treatment, which I fully understand, (4) All the above details have been explained to me in my vernacular language and (5) I have had an opportunity to discuss any and all questions related to the recommended treatment. In spite of this understanding, I refuse and decline to consent to this medical treatment.

Date _____ Time _____ Patient/Guardians Signature (Guardians Relationship) _____

The patient/authorized individual has read this form or had it read to him or her. Yes/No

The patient/authorized individual states that he or she understands this information. Yes/No

The patient/authorized individual has no further questions. Yes/No

Witness 1 Signature & Address, Phone Number _____ Date _____ Time _____

Witness 2 Signature & Address, Phone Number _____ Date _____ Time _____

assault might not give consent for examination due to various reasons like apprehension to file a FIR or negotiation. Under such situations also the doctor supposed to issue Medico legal injury report should take a documented informed refusal from the patient to avoid any controversy in the future. Similarly a sexual assault victim may not be willing to undergo examination or evidence collection due to apprehension or various emotional reasons, so it is the duty of the doctor to either convince the victim or take a documented informed refusal to avoid future accusations. To popularize the doctrine of informed refusal steps should be taken to introduce doctrine of informed refusal in the general practice and academics for future.

Conclusion

The doctor patient relation is based on the care, mutual respect, trust, consent and refusal for treatment. A doctor must respect and should not interfere or manipulate the decision of the patient, though he should counsel and encourage the patient to take the best possible decision for him/her. A medical practitioner must take all the measures and efforts to convince the patient for continuation of treatment even in a terminal stage. The merits and demerits of the medical and surgical intervention must be informed to the patient in his/her vernacular language and in the simplest way without concealing any information. But in case the patient remains unconvinced then the doctor must respect the final decision of the patient, but still provide help and support to the patient in the best possible way. The denial should be documented in

writing in a format of Doctrine of Informed Refusal with signatures of *compos mentis* patient or legal heirs in case patient is underage (< 12 years) or non *compos mentis*. Informed Refusal is as much important as Informed Consent and a doctor must at all times of treatment record the treatment given, advice, consent and refusal by the patient.

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