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Mini Review

There was Transparent Tranquility in the Old Surgeon-Patient Relationship unlike Today's Troubles in the Courts: A Historical Review

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Abstract

Much as the prevailing opinion is that informed *consent* is a modern legal problem, it is shown that even the very word, consent, appeared in the literature during the olden days by 1753. Nowadays, since consent has become a bone of contention, it has even been proposed that tactics should be changed by requiring the patients themselves to provide in writing an informed request! In this context, it is shown here that the patients of yore were the ones who pleaded for the operations. For example, a word such as "desire" for the operation was in common use from 1805. Hence, the harmonious past contrasts with the present uncomfortably high legal stakes. Therefore, let the surgeon's sagacity triumph over any patient's adversarial attitude. In all probability, the prevailing gloom ought to increasingly give way to bloom itself.

Keywords: Patient; Surgeon; Relationship; Litigation; History

Introduction

Consent is nowadays very much a bone of contention in the law courts. Thus, note the outcry in obstetrics and gynecology COMMENTARY made by Symonds [1]: "Nobody likes to talk about the pending litigation that involves them. After all, there must have been some complication or fault or perhaps even both that led to the action in the first place. The fact is that most consultants in obstetrics and gynecology have been sued, or are being sued or will receive the unwelcome attention of a litigious patient in the near future and none of us quite realize how far things have already moved. Unfortunately, we have now joined the ranks of the big spenders in medical litigation and it is going to get worse." Little wonder that Goodman [2] was so piqued by the rash of litigations in the field of *informed consent* that he took a directly opposite view by affirming that the situation is "basically and inherently erroneous." Accordingly, passionately looking at the other side of the court coin, he proposed that it should be the patient's own duties to give his/her doctor an *informed request*! Moreover, this is to be done in writing. See his proposed Form:

"I (name of patient), being advised of the various surgical and non-surgical types of care available to treat my problem and understanding the numerous risks and complications of the different treatments, have selected the surgical plan of care. I therefore request that Dr. (surgeon) make arrangements for the above surgery and I also request that he perform the operation known as (name procedure). In requesting this procedure I further assume all risks involved."

Recently, Erlen [3] generalized thus: "Informed consent has been widely discussed in the ethics, legal, research, and clinical literature." As she added, "questions continue to arise." As for Holm [4], "The article describes the historical development of the concept of informed consent in biomedical research and explores its current embedding in international legal documents." It is relevant to take into account the angle of Terry [5] as follows:

"The concept of informed consent has been evolving over the past 100 years based largely on case law early in the last century and later influenced by the Nuremberg trials, influential articles such as those of Henry Beecher, and contemporary bioethical thought beginning in the 1960s in the United States."

Burch [6] sought to identify "a market-based solution for monitoring large-scale litigation." She noted that "attorneys front massive litigation costs." As she continued, "But alternative litigation financing, which involves hedge funds, private investors, and venture capitalists investing in and profiting from large-scale litigation, raises problems of its own and has already sparked a chorus of criticism." An interesting example may be given thus: "Litigation has arisen following complications from local steroid injection; in one recent case in the UK the doctor involved was criticized for not recording a definite indication for the steroid injection in the case notes" [7]. In this context, now that physician burnout is emerging and requiring attention [8], litigation must not be allowed to be part of it world-wide.

Historical texts

Much as the prevailing opinion is that informed consent is a modern legal problem [9], even the very word, consent, appeared in the literature in the olden days. For instance, over two centuries ago, Norford [10] delved into the past itself thus: "But how shocking and deplorable a State must those unhappy People be in, in former Days, who were afflicted with it, and consented to come under the Surgeon's Hands?" Three decades later, Bell [11] in Edinburgh was unhappy about the delay in a case of cancer of the breast both "before a practitioner recommends amputation of a breast, and almost always before a patient consents to it." By the turn of the century, Hey [12] in Leeds noted that "the tumour was so much increased in bulk that

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she consented to the operation which I had proposed." With regard to both his private practice and to the Middlesex Hospital Practice, Bell [13] exemplified with the patient who "stands prepared for the worst, (and) has consented to lose the limb." And, in Glasgow, Beatson [14] stated that his patient "readily consented that I should do anything that held out any prospect of cure."

Cure was naturally sought by the patients themselves during the past centuries. In fact, the main purpose of this paper is to draw attention to the published patterns of the attractive attitudes of the perturbed patients themselves. In particular, it is worth reiterating that the old masters were often moved to operate because of the ready requests of the parlous patients. For instance, Lawrence [15] operated on a patient under ether inhalation because there was such intense pain in the eye that he "determined to have the eye removed at whatever risk." Earlier, Lawrence [16] had given elsewhere some detailed accounts which deserve to be abridged as follows:

The aspect of the disease was unfavourable. Its rapid growth, its fungous, grey, and bleeding surface, led to the belief that it was of malignant nature. The urgent desire of the patient was to be relieved from so unpleasant a local malady, which had already caused, and still produced much suffering. This induced my colleagues and myself to agree in thinking, that the operation might be performed even as a measure of temporary relief.

Relief was undoubtedly sought by perilous patients from sagacious surgeons in yester years. Indeed, the pleadings of such patients need to be exemplified. Remarkably, just one word, "desire," featured in the above case and repeatedly as follows:

(i) " if the patients should desire the operation" [17],

(ii) if the patient "expresses a desire to lose the limb" [13], and

(iii) The more serious operation of extirpation of the eye ought never to be undertaken, except when the patient "expresses a desire" [18].

1846 witnessed the publication by an eponymous giant [19] of "*Lectures illustrative of pathology, and surgery.*" Indeed, it contained the highly illustrative story of gratifying management of a patient as follows:

A lady had an enormous tumor of the breast. It did not feel very different from the natural breast, but it seemed like a breast of a monstrous size. Sir Astley Cooper saw the patient with me. There is such a disease as hypertrophy of the breast; that is, a morbid increase of the gland, without any actual alteration of structure; and both Sir Astley and myself were inclined to believe that such was the nature of the disease in this instance. The tumor continued to grow; the patient became tired of carrying it about, and we recommended her to have it removed. Sir Astley Cooper was present at the operation, and we set about it, believing that I should remove the whole breast. When, however, I had made the first incision, I found that the breast lay perfectly sound in front, expanded over the surface of a large tumor which was situated between it and the pectoral muscle. The first portion of the tumor which I exposed had the appearance of the chronic mammary tumor; then I came to a mass of fat; then to the other structure again. In short there was a fatty tumor and a chronic mammary tumor blended with each other. The entire mass probably weighed between two and three pounds. The patient recovered; and up to this time, that is, at the end of seven years, there has been no recurrence of the disease.

Disease engenders the desire for expert treatment. Therefore, it is satisfying to learn that Warren [20] in America wrote in the terms of patients becoming "more desirous" for the operation. In Britain, there were robust requests made by the sufferers such as the one who came to "insist on the operation being performed" [21], and the other who "earnestly called for the performance of an operation to give relief" [22]. Moreover, as Velpeau [23] put it in France, the surgeon is "encouraged by the entreaties of the patient." In fact, it was the forlorn fact of being in the straits of adversity that often moved the patient to personally request for surgery. For example, in the American case reported by Gross [24], a 45-year-old woman had right shoulder pain which became "excessively severe" and "at length produced such extreme suffering," that she had "to demand disarticulation." Likewise, concerning a Scottish woman, Macfarlane [25] was observant thus:

The disease was too extensive to be thoroughly extirpated: but as this poor woman had come from a great distance in the Highlands, and was exceedingly anxious to have the operation performed, even after she was candidly told that there was every possibility of its proving unsuccessful, her urgent entreaties were complied with.

With reference to one young patient with testicular tumor, Bell [13] was explicit thus: "I informed him of his danger; he was surprised that I should consider it so seriously, but threw himself entirely into my hands." Or, as Richard Wiseman [26] was told by another anguished patient: "God's will be done. I pray go and consider of the way: for I had rather die than live thus." It is well to add that the patient of old was not always satisfied with their doctors. An interesting case is worthy of recall. The famous Sir William Jenner [27] was explicit as follows:

An Italian gentleman came to me about twelve months ago. He was dying of cancer of the tongue. He was in the last stages of the disease, and in a most horrible condition. He had been under someone who had promised him a cure. He had then gone to Sir James Paget, who had not promised to cure him, but had told him that nothing could be done. This poor man told me, as well as he could, partly writing in down, that he had been cruelly used by Sir James in being spoken to so plainly. At the same time he wished me to speak plainly to him. I told him, of course, that he would die.

Conclusion

The problems of informed consent have been presented in terms of the past. No doubt, present problems are very much with us. Hence, let the future be influenced by the lasting lesson presented in this historical review. In sum, the amity between the patient and the surgeon of yester years should reign and not the enmity feature nowadays. In all probability, if awesome attitudes and loathsome litigations diminish, the present gloom will give way to future bloom.

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