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Chiropractic informed consent

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Ethical concerns about informed consent encompass the legal functions of protection of patients through self-determination, but also considers other ways of respecting patients through seeking their benefit and their autonomy. The influence of traditional medicine on patient expectations, and use of consent forms often renders consent a difficult issue in the relative safety and non-invasiveness of chiropractic practice. The ethical concern with consent, however, focuses attention on patient participation in health care decisions. Chiropractic relationships are often quite conclusive to this sharing of health care decisions after education. Exceptions to informed consent are not typically relevant to chiropractic patients who are conscious, competent and not in need of emergency treatment. It is therefore important that patients are aware of non-chiropractic alternatives and very rare risks of a serious nature. Rather than an impediment, ethical concerns about consent encourage a relationship of education and shared responsibility which encourages chiropractic patients to accept responsibility for their health.
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KEY WORDS: Biomedical ethics, informed consent, chiropractic, manipulation.

Des problèmes d'éthique médicale au sujet du consentement éclairé entourent les fonctions légales de la protection du patient, au moyen de l'auto détermination. D'autres façons ont également été considérées de respecter les patients, en recherchant leur avantage et leur autonomie. L'influence de la médecine traditionnelle sur l'espoir des patients et, l'emploi de formulaires de consentement font souvent de celui-ci un problème difficile dans la sécurité relative et le caractère non envahissant de l'exercice chiropractique. Le problème de l'éthique médicale, dans le cas du consentement, attire cependant, l'attention sur la participation du patient dans les décisions concernant les soins. Les relations chiropractiques sont souvent très décisives pour ce partage des décisions, après éducation. Les exceptions au consentement éclairé ne se rapportent pas typiquement aux patients chiropractiques qui sont conscients, compétents et qui n'ont pas besoin de traitement d'urgence. Il est par conséquent important que les patients soient au courant des choix non chiropractiques et des très rares risques d'une grave nature. Au lieu d'être une entrave, les problèmes d'éthique médicale au sujet du consentement éclairé encouragent une relation d'éducation et une responsabilité partagée, laquelle incite les patients à accepter une responsabilité pour leur santé.
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Introduction

Before Mason vs. Forgie,[1] informed consent must have seemed a doctrine or practice alien to chiropractic; a standard necessary to limit invasive risk-laden intervention in acute care, unnecessarily extended by law to chiropractic practice. Chiropractic differs from traditional medicine in its less invasive, less risk-laden practice and its focus on health promotion and maintenance. Carey outlined the legal implications of consent law and cases.[2] The ethics of consent discusses respect of patients as persons through informing and involving them in their chiropractic care decisions. I will demonstrate why ethical care of patients requires involving them in all aspects of heath care decisions, and therefore requires that patients know of alternatives and risks.

History of informed consent

Contemporary concern about informed consent, and roots of contemporary bioethics, are found in the post-World War II Nuremberg military tribunals, and the resulting Nuremberg Code.[3] The horrors of experiments conducted by researchers and physicians led to formal requirements that persons who served as experimental subjects be volunteers who agree with full knowledge of the risks and benefits. Concern about consent

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to therapeutic procedures arose later, as immoral instances of therapeutic research were discovered, as patients became more educated, and distrust of public and private institutions grew. Inevitably, many of these disputes were publicized and concluded in court rooms. Patients' legal right to informed consent was strengthened so that physicians' responsibility was no longer defined simply by their medical community's standard of practice, but must now provide a basis for defense against charges of assault and battery.[4]

The rise of informed consent, and its relevance to chiropractic, can be seen in sociological studies of medicine. Talcott Parsons[5] explained that patients were dependent on physicians for many non-medical, social needs. Patients need to have their sick leave legitimized to employers, family, friends, insurance companies and social institutions. Physicians grant patients access to controlled substances, and to other medical services. More recent sociologists of medicine have documented how maintaining a "knowledge gap" is a source of power for any health care provider.[6] When combined with physicians' authority to legitimate illness and grant access to treatment, this power makes it difficult for patients to take responsibility over, or control, their health and health care. This culture-wide authority has historically been the basis on which the medical profession has extended its control over medicine and other health professions, including chiropractic.[7] The knowledge gap permitted physicians to make decisions on behalf of patients and social institutions without giving their reasons. The same authority allowed them to reject as "unscientific" and "dangerous" those health practitioners who might compete for patients or threaten the medical profession's credibility.

What is informed consent?

Informed consent is a rejection of this knowledge gap as a basis of authority or trust. The more ethical alternative is a trust relationship based on shared knowledge about the patient's situation and the practitioner's expertise.[8] The medical profession and institutions are having a difficult time working this ethical goal into some professional practices, medical institutions and patients' expectations. Chiropractic has the advantages of less institutionalized practice, typically "healthy" patients, and recognition of how important patient understanding and "compliance" is to chiropractic care. In other words, substitution of shared information for the knowledge gap as a basis for the doctor-patient relationship is either already accomplished or relatively simple to do in the case of chiropractic. Your largest stumbling block may be patient expectations which have been strongly ingrained by traditional medicine. Retraining yourselves and patients must occur simultaneously, so that the benefits of the relationships may continue while responsibility (and liability) shifts from the doctor toward patient until it is shared.

Consent forms: help or hindrance?

The doctine of informed consent (that patients must freely choose their therapy or regimen with knowledge of the alternatives and consequences) is an attempt to increase patient control and responsibility, or what philosophers call autonomy. A consent form might describe the following: (1) what adjustments are planned, (2) their frequency, (3) patients' involvement through exercise, (4) the risks of any such activities including the incremental risk of stroke, (5) alternatives or consequences of not undergoing the planned course. Does presenting patients with such a form, and requiring their signatures, improve either their knowledge of the regimen and alternatives, or their control and responsibility? Often such forms interfere with communication which freely flows in a good relationship. In other instances a skillful practitioner can use such a form as a sort of checklist for comprehension by discussing each point with the patient and encouraging questions. In a third type of situation, a rushed or authoritarian practitioner or a poor relationship may mean that the only knowledge exchange and patient participation is the ritual signing of the consent form. Such a minimal notion of consent, while representing an improvement, is inadequate.

Relationship, not a contract

The legal notion of consent appropriately encourages this minimal notion of informed consent. Since violation incurs penalty, we would not want legal liability attached to our ethically ideal consent. But our ethical responsibilities are not fulfilled by merely obeying laws. The ethical chiropractor is one who will attempt to increase patients' participation through education and shared decisions at every opportunity throughout the duration of the relationship. This will fulfill the legal obligations, and shift responsibility for health onto patients.

Disclosures: what should patients be told?

Carey has already listed the kind of information which should be given to patients.[2] Whether on a consent form, or in conversation, the following types of information should be understood by the patient.

1 Proposed regimen: exact procedure(s), frequency, obvious inconveniences, pains, risks, financial costs and benefits;
2 Alternatives: What else could the patient do to address the same health concerns, and with what risks, benefits, costs and inconveniences? What if the patient does nothing?

Risks

The world is far from perfect, and the pursuit of any positive values has risks. In health care, the pursuit of patient health incurs risk and physical, emotional or moral harm to the patient. Since we want patients to be responsible for their health, we must allow them to participate in selecting the means of achieving health, by weighing the benefits, and their likelihood against the risks. Smaller probabilities of benefit, or more insignificant benefits (as valued by patients) mean that less frequent or less serious risks or costs are relevant to their decisions. Patient comprehension, questioning, reflection and choice is necessary because no chiropractor has a near perfect understanding of how

individual patients value benefits, and particular risks, costs and inconveniences. Any withheld information restricts this patient participation. Certainly the very unlikely, though remotely possible, risk of stroke must be disclosed. Temporary muscle soreness and difficulty performing certain tasks may not be relevant or material if a rare occurrence, but must be disclosed if common.

Alternatives

Should you mention non-chiropractic alternatives to your patients? The short answer is yes. If an orthopedic surgeon or a rheumatologist would offer different treatment to a patient, then patients should know about that alternative. The short answer, however, is too simple. Some patients will already have been to these physicians, or even through the treatments. If your "history" or conversation reveals this, then you need not risk insulting your patient by raising those alternatives. Other patients may be unaware of, or even hostile to traditional medicine. These people should at least be advised of the existence of alternatives. Clear, reasonable expectations are to the advantage of the chiropractor and the patient, and some frustration with traditional medicine may be based on patients' unrealistic expectations of medical and chiropractic doctors.

Chiropractors are often uneasy about describing the risks, benefits and nature of medical treatment. Another approach is to mention the alternatives and suggest if patients are interested in considering them, they should seek information from the appropriate professionals. Ideally, chiropractors should be granted the same courtesy by physicians. From the perspective of interprofessional competition, the obligation of the chiropractor to mention alternatives may seem unfair. However, since the obligation is owed to the patient, not physicians, disclosure is required even though physicians may fail to reciprocate.

Exceptions to informed consent

There are three traditional exceptions to the requirement of informing patients and proceeding only with their consent; emergency treatment, incompetent patients and "therapeutic privilege". Emergency treatment is only relevant in acute care, where delaying for consent or until the patient regains consciousness is likely to result in loss of life or "function". This is unlikely to be relevant to chiropractors.

Incompetent patients must have a proxy or guardian consent on their behalf. That person must be fully informed and responsible for the patient's best interests or wishes expressed when the patient was competent.

Therapeutic privilege has broad and narrow definitions. The legal and ethical trends are narrowing, and it is unlikely that therapeutic privilege will be relevant to chiropractic. This seems to be a point of disagreement between ethics and the legal standard expressed by Carey and the Canadian Chiropractic Protective Association.

Perhaps the earliest, and most concise statement of therapeutic consent is by Judge Spotswood W. Robinson III in Canterbury versus Spense.[10] The key phrase indicates that therapeutic privilege does not justify withholding information from a patient "because divulgence might prompt the patient to forego therapy the physician feels the patient really needs."[10] Rather, such withholding is only justified if the disclosure of the information could harm the patient. A patient in such a delicate cardiac or emotional state that disclosure of distressing information could harm them, should not generally be consenting to chiropractic care. Avoiding patient distress uncomplicated by these underlying conditions is too convenient an ethical standard. If a chiropractor believes a patient is emotionally or physically compromised, then appropriate care for these acute conditions should precede consent to chiropractic care.

Summary

Ethical concerns about informed consent focus on creating a therapeutic relationship where there is constant communication of information, recommitment to care and shared decision-making. Patients' trust in a chiropractor should be based on reasonable expectation and commitment to regimens, not on blind faith or simple frustration with traditional alternatives. Consent forms may facilitate information sharing and participation, but are neither necessary nor sufficient.

There is no substitute for non-defensive discussion of risks, costs, inconveniences and benefits of the proposed regimen and the alternatives, if any. Chiropractors need not become experts on medical alternatives, but can openly suggest to their patients that they gather information from the relevant health professionals. While patients might waive disclosure, accepting such limits removes responsibility for health from patients, and promotes an image of chiropractic care as an "illness-treating" rather than a "health-promoting" profession.

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