

# Consent and Capacity Assessment in Psychiatric In-Patient Units

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**Abstract:** *In health care, consent must be given with full capacity and voluntarily by a well-informed patient. Every communication pertaining to diagnosis and treatment must be provided in simple terms by health care professionals specifically a physician before taking a patient's consent. It is important for a patient to know the nature and consequences associated with every medical decision. Risks and benefits about the treatment and other alternatives should be informed to patients and relatives. In special cases such as a minor, a legal guardian is responsible to provide consent. Assessment of incapacity must be performed on various aspects of higher mental functioning. It is crucial to note that consent is provided freely with no coercion or manipulation so as to avoid ethical and legal issues in near and distant future.*

## 1. INTRODUCTION :

Health care providers work 24/7 for bringing better patient outcomes specifically in terms of patient safety. Several ethical and legal issues arise as a result of intentional and unintentional torts. A well informed consent is crucial in prevention of such issues in delivery of health care services. Consent is an expression of respect towards autonomy and self-determination of a person. Before providing consent, an individual must demonstrate mental capacity so as to understand causal relationships and outcomes which could be affected by problems in intelligence, attention and memory. As per Indian Contract Act (Section 13), two or more persons are said to give consent, if they agree in same sense on same thing (1). Informed consent refers to the process of ensuring that individuals have a clear understanding of the potential risks, benefits, and alternatives involved in a particular treatment or intervention before they can provide their consent.

According to Section 88 and Section 90 of Indian Penal Code (IPC), a child can provide consent for any medical procedures if he or she is above the age of 12 years. On the contrary, Indian Contract Act states that a person must be at least at an age of eighteen years to enter into a contract to provide consent. In case of sexual assault, victim of age above 12 years could provide consent for examination and treatment as per guidelines put forward by Ministry of Health and Family Welfare (MOHFW). Mental Health Care Act (2017) states that a person aged less than 18 years is considered to be a minor for whom a legal guardian is responsible in making decisions on mental health care services (1). Hence, consent in health care services must be provided freely and voluntarily by the patient with capacity once he or she reaches a final decision after receiving complete information on the treatment process. If a patient undergoes treatment in the absence of consent, it results in ethical issues including tort of trespass and crime of battery (2).

### 1.1 Types of Consent

Consent in health care settings is classified as implied and expressed. It is said to be implied if a patient presents himself or herself before a physician as he or she is agreeing for the services provided. Implied consent does not involve therapeutic interventions such as surgical procedures and diagnostics. A distinct and explicit language either in a verbal or written form is considered to be a valid expressed consent. An oral consent is legally valid if it is taken and later recorded in the case file for specific bedside procedures such as sample collection, medication administration and physical examination of a patient. As per Indian Medical Council regulations of 2002, surgical procedures must be performed with a prior written consent from the patient. All major diagnostic procedures and psychotherapy are performed after obtaining written consent. A written consent is valuable in case of a court case in order to defend the

physician. Consent is called a legal contract, if doctor and patient sign it in the presence of third parties as witnesses such as patient's attendant or health care providers including nurses (1).

## **1.2 Components of Consent**

The components include voluntariness, doctrine of informed consent and capacity to consent. Voluntariness to consent is when it is given without coercion, undue pressure and misrepresentation of information by any parties. Information on course and complications of illness, nature, risks, benefits, and follow-up of treatment must be provided to patient. All information must be simple and clearly understood by the patient. Right to informed refusal by patient must be addressed in terms of any treatment modality. Capacity to consent implies both physical (for instance, age) and mental capacity of the patient (1).

## **2. CAPACITY TO CONSENT :**

In psychiatry, obtaining informed consent is particularly important due to nature of mental health conditions and potential impact of psychiatric treatments on an individual's autonomy and well-being. It is referred to as ability to understand and weigh up information in arriving and communicating a decision (3). It includes understanding, appreciating, reasoning and communicating a choice by an individual. Appreciation refers to a person's ability to identify the performance and consequences of a task on self and others which could be diminished by cognitive deficits. Reasoning helps an individual to weigh the risks and benefits of a decision in keeping with best interests and personal values which might be distorted by mental health conditions such as psychosis. A person's communication ability is questioned if there are frequent irrational changes in the choices and unable to rationalize the decision. Mere presence of a major or minor mental disorder does not guarantee the incapacity of a person to decision making (4).

In spite of diagnosed with a mental disorder, a person is capable to make decisions which would include understanding and appreciating (i) nature of treatment and consequences of withholding consent (ii) appointment of a substitute decision maker such as a nominated representative (iii) nature, choices and consequences of a financial decision. Even though terms such as capacity and competence are used interchangeably, capacity is assessed by a health care professional whereas competence is tested by a judicial body. Capacity to make a decision must be tested time to time as it may vary and therefore, an individual incapable of making decisions should not be judged as incompetent.

### **2.1 Assessment of Incapacity**

Incapacity is assessed based on patient's ability to understand, weigh, communicate and retain memory of information on making a decision. It is crucial for any mental health care providers to know about the proposed treatment and information discussed with patient prior to interview. Individual factors such as psychiatric illnesses (dementia, specific learning disability and traumatic brain injury) may affect a person's ability to make decisions on treatment. A comprehensive psychiatric assessment, screening for mental illness and evaluation of decision by patient is strictly required. Assessment must be focused on the higher mental functioning such as cognitions, reasoning and judgement (5).

## **3. COMPETENCE :**

Competence in informed consent refers to an individual's ability to understand and make informed decisions about their own medical care or participation in research studies. Informed consent is a critical ethical and legal requirement in healthcare and research settings, ensuring that individuals have the autonomy to make decisions based on accurate and comprehensible information. Competence can vary among individuals and may be influenced by factors such as age, cognitive abilities, mental health, cultural background, and language proficiency. In situations where a person is deemed incompetent due to factors such as cognitive impairment or psychiatric illness, alternative approaches, such as obtaining surrogate consent from a legally authorized representative, may be necessary.

### **3.1 Key Elements of Competence**

The individual should possess the capacity to comprehend relevant information about their condition, treatment options, potential risks, benefits, and alternatives. The decision to provide consent should be made willingly, free from coercion, undue influence, or manipulation. The individual should have the freedom to refuse or withdraw consent without facing

any negative consequences. The person must have the ability to think rationally, weigh different options, and make reasoned decisions. They should be able to evaluate the relevant information and communicate their decision effectively. Competence also involves effective communication between the individual and the healthcare provider or researcher. The information provided should be tailored to the individual's level of comprehension and presented in a clear and understandable manner.

#### **4. ROLE OF MENTAL HEALTH TEAM :**

Mental health team have a responsibility to provide patients with relevant information about their diagnosis, treatment options, potential risks and benefits, and any alternatives available. This information should be presented in a clear and understandable manner, tailored to the individual's capacity to comprehend. Psychiatrists must evaluate the patient's decision-making capacity or competence to understand the information provided and make an informed choice. If a patient is deemed incapable of making decisions, additional steps may be taken to involve a surrogate decision-maker or follow legal processes for decision-making on their behalf. The person providing consent must have the legal and mental capacity to make decisions. In some cases, such as research involving children or individuals with cognitive impairments, proxy consent from a legally authorized representative may be required.

Informed consent should be obtained voluntarily, without coercion or undue influence. Patients should have the freedom to accept or refuse treatment, and they should not be subjected to pressure or threats for making a particular decision. Psychiatrists should document the informed consent process in the patient's medical record. This includes documenting the information provided, the patient's understanding, any questions or concerns raised, and the patient's consent or refusal of treatment. Informed consent is not a one-time event but an on-going process. Communication should be open and continuous, addressing any questions or concerns that may arise throughout the course of treatment. It is important to obtain renewed consent if there are any significant changes to the treatment plan. In some situations, there may be exceptions to obtaining informed consent. For example, if a patient lacks decision-making capacity and there is an immediate risk to their safety, emergency interventions may be necessary to protect them. However, such interventions should be guided by established legal and ethical principles (5).

#### **5. CONCLUSION :**

In a nutshell, healthcare professionals and researchers have a responsibility to assess and ensure an individual's capacity and competence in the process of providing an informed consent. This may involve using appropriate assessment tools and additional support, or involving third-party advocates when necessary to safeguard the individual's rights and well-being. If in any circumstances it is found that a patient is incapable to provide consent, a well-informed surrogate decision maker would be chosen. Moreover, consent is considered to be valid only if it is informed and given freely by a person with full capacity.

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