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Expressed Informed Consent for Intimate Gynaecological Examinations

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The doctor-patient relationship, although extremely important and essential to ensure optimal treatment outcomes, remains complicated. This relationship allows two people, unfamiliar with each other, with different value systems, to share intimate information, and allows the healthcare provider to perform intimate examinations on male or female patients. During the past two to three decades, the doctor-patient relationship has evolved from a mainly paternalistic relationship where the doctor knew what is best for the patient, and "good patients" were regarded as those who submissively accepted the proposed treatment or intervention, to a more patient centred model of mutual participation and decision making in caring for the patient.[1] Although this model is based on equality, shared power and responsibility, the balance of power in this relationship in practice is not equal. The power balance tends to favour the doctor, regardless of how well the healthcare provider executes his or her responsibility in this regard.[2] The patient is frequently in a compromised situation, having a health problem requiring treatment, with not many options than to rely and depend on the doctor's specialised knowledge and skills. In some settings the patient does not even have the right to choose a healthcare provider of his or her choice and have to accept what is available, regardless of their perception of the individual professional that will be treating them.

The gynaecological examination is the most intimate encounter gynaecologists and other healthcare workers will have with female patients. The woman who is about to undergo this intimate examination, might already be in a vulnerable position, as she might have already shared sensitive and private information during the history she provided. The intimate nature of the examination will result in her to be even more vulnerable during the gynaecologic examination

Although informed consent has become an integral and well established principle in modern day obstetrics and gynaecology practice, one of the issues that seems to remain widely practised, is that of implied consent. It is assumed that if a patient visits the gynaecologist, undresses and allows herself to be positioned to facilitate an intimate examination with a speculum or digitally, that she has provided consent thereto. As informed consent is reliant on the sharing of information allowing someone to take a certain decision, this process might fall short of the requirements of adequate informed consent, when consent is perceived to be implied.

Judge Sylvia Cartwright published a report following an inquiry into research conducted by Prof Herbert Green and colleagues at New Zeeland's National Women's Hospital, where conventional treatment had been withheld in women with cervical cancer in situ without their consent, resulting in severe avoidable adverse outcomes for many patients.[3] The Cartwright report specifically addressed the communication needs of women undergoing gynaecological examinations, arguing doctors need to realise that the genital tract is a "sacred part of a woman's body, which should be treated with respect, examined in total privacy, and under conditions which enable the woman to respond with trust and to communicate her views, symptoms and feelings as an equal".[4] Judge Cartwright also emphasised that it is the duty of healthcare providers to be mindful of power relations, which may result in women consenting to intimate examinations for other reasons than true informed consent. Cartwright also commented on women's right to effective communication and informed consent, and is of the opinion, that "it is critically important that the health professional is certain that consent is freely given and that she has not acquiesced from natural courtesy or a wish to please someone who appears to be of greater status than herself".[5]

According to the guidelines of the Health Professions Council of South Africa (HPCSA) on informed consent, healthcare professionals should be careful about relying on a patient's apparent compliance with a procedure as a form of consent, as submission in itself may not necessarily indicate. Healthcare workers are advised in these guidelines that "consent must at all times be expressed and not implied".[6] Should a complaint be lodged against a practitioner at the HPCSA in this regard, the above guideline is what will be used to measure healthcare professionals' conduct.

It is well-known that interventions performed on patients without their consent constitute an assault on the patient.[7] To complicate matters further, any finding of an intimate examination performed by a healthcare provider on a male or female patient, performed without consent, can potentially result in a criminal case of sexual assault or even rape.

Over the past three decades, there has been a shift in the importance and responsibility of healthcare workers regarding the issue of obtaining informed consent, and there has also been an increased awareness amongst

patients regarding their reproductive healthcare rights. Non-consensual pelvic examinations performed under anaesthesia have been one of the issues that have sparked the debate and highlighted the importance of proper informed consent before pelvic examinations are performed on woman, either in the consulting room, outpatient setting, in-hospital, or whether anaesthetised prior to surgery.[8] In the setting of healthy patients presenting for routine annual gynaecological and breast examinations or periodic cervical cancer screening, informed consent becomes even more crucial, as there is very limited evidence to support digital vaginal examinations in healthy asymptomatic women. Besides questions about its usefulness, evidence also suggest these examinations may be traumatic and stressful for women.

It is reasonable to conclude that modern day obstetrics and gynaecology practise is conducted in a complex social environment. Although most healthcare workers only attempt to do the best for their patients under all circumstances, practice procedures should be in place to ensure patients are well informed about what to expect during a planned gynaecological examination, how it will be performed, who will perform it, and the availability or not of a chaperone, prior to them consenting to any form of intimate examination.

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