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Consent and clarification: duty and right to information in dentistry

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Abstract

Studies on informed patient consent in the field of dentistry are scarce and present divergences, highlighting the need to deepen knowledge about definitions, dynamics, normative acts, case law and limits of responsibility in the face of diverse factors and risks inherent to the profession. From a bibliographic review that included studies indexed in the SciELO and LILACS databases, as well as textbooks, this study aimed to define what is meant by a patient's free and informed consent, distinguish different types and highlight the so-called "informed choice," considering that the activity of the dental surgeon is classified as a service and is regulated by the 1988 Federal Constitution of Brazil, the Consumer Defense Code, the Civil Code and special laws. The aim is to see if it is possible to improve the process of obtaining informed consent from patients, transforming it into a process of informed choice that takes into account appropriately indicated treatments whose main purpose is health.

Keywords: Dentistry. Informed consent. Patient preference. Decrees.

Resumo

Consentimento e esclarecimento: dever e direito à informação em odontologia

Estudos acerca do consentimento informado de paciente no âmbito da odontologia são escassos e apresentam divergências, evidenciando a necessidade de aprofundar o conhecimento sobre definições, dinâmica, atos normativos, jurisprudência e limites de responsabilidade diante de fatores diversos e riscos inerentes à profissão. Por meio de revisão bibliográfica que incluiu estudos indexados nas bases de dados SciELO e LILACS, bem como livros-texto, buscou-se definir o que se entende por consentimento livre e esclarecido do paciente, distinguir diferentes tipos e destacar a denominada "escolha esclarecida", considerando que a atividade do cirurgião-dentista é classificada como serviço e é regulamentada pela Constituição Federal de 1988, Código de Defesa do Consumidor, Código Civil e leis especiais. Diante disso, busca-se verificar se é possível melhorar a obtenção do consentimento informado do paciente, transformando-a em processo de escolha esclarecida que considere tratamentos adequadamente indicados cuja finalidade principal é a saúde.

Palavras-chave: Odontologia. Consentimento livre e esclarecido. Preferência do paciente. Decretos.

Resumen

Consentimiento y aclaración: deber y derecho a la información en odontología

Los estudios del consentimiento informado del paciente en odontología son escasos y presentan divergencias, lo que revela la necesidad de profundizar en el conocimiento en definiciones, dinámicas, actos normativos, jurisprudencia y límites de responsabilidad frente a diversos factores y riesgos relacionados a la profesión. A partir de una revisión bibliográfica en las bases de datos SciELO y LILACS, y en libros, se buscó definir qué se entiende por consentimiento informado del paciente, distinguir diferentes tipos e identificar la llamada "decisión aclarada", considerando que la actividad del cirujano dental está clasificada como un servicio y reglamentada por la Constitución Federal de 1988, el Código de Defensa del Consumidor, el Código Civil y leyes especiales. Se busca identificar si es posible mejorar el consentimiento informado al convertirlo en un proceso de obtención de decisión aclarada que considere adecuadamente los tratamientos cuya principal finalidad sea la salud.

Palabras clave: Odontología. Consentimiento informado. Prioridad del paciente. Decretos.

The authors declare no conflict of interest.

Despite currently constituting a specific branch of knowledge located in the area of concentration of health sciences and presenting different segments, historically, dentistry functioned as an appendix to medicine, being exercised by surgeons or so-called practitioners who had no technical-scientific training^{1,2}. Brazil only recognized it as a higher education course in 1884, with Decree 9,311/1884³. During its trajectory, it went through two very distinct periods: pre-scientism (without professional training) and scientism (with training and research)^{4,5}.

In the 21st century, numerous advances have emerged in the most diverse sectors, such as the use of the L-PRF membrane to reduce the healing time of hard and soft tissues; computer-aided design/computer-aided manufacturing (CAD/CAM) and 3D technologies, which enable the projection and manufacture of teeth on a computer; surgical ultrasound, for cutting hard tissues and preserving soft tissues; zirconia and porcelain prostheses; guided surgery and intraoral scanning; mesenchymal stem cells aiming at tissue regeneration; invisible orthodontic appliances; electronic anesthesia; and the development of advanced techniques in oral and maxillofacial surgery and traumatology, used in cases such as tooth retention, which can be treated through apicoectomy and double loop, and in patients with ankylosis of the temporomandibular joint, who have the option of being treated with Puricelli biconvex arthroplasty^{6,7}.

This evolution in dentistry, however, was not enough to solve all cases. The success of dental treatment depends on a set of factors, such as careful evaluation, clinical and complementary exams, accurate diagnosis, and adequate planning. The data can indicate different therapy options, which requires the patient to be adequately informed to adhere to the treatment^{5,6}.

Furthermore, factors related to professional ethics must be considered, which deals with the study of morality applied to daily practice. Autonomy is one of the most essential bioethics principles, perhaps the most discussed in ethical literature, especially regarding the professional-patient relationship and obtaining informed consent. In this context, for the patient to exercise their autonomy, no therapeutic procedure can be carried out without their verbal

or written consent or, if applicable, that of a legal representative^{7,8}.

Ensuring perfect communication between patient and professional requires informed consent, which consists of informing the patient in advance about professional practice. Thus, informed consent advocates the improvement of biomedical ethics. Considering the scarce literature on the topic, this review aims to clarify the importance of the informed consent form (ICF) in the patient-professional relationship. Thus, we seek to highlight the need to deepen knowledge about definitions, dynamics, normative acts, jurisprudence, limits of responsibility in the face of different factors, and risks inherent to the profession.

Understanding a phenomenon in its context of occurrence requires it to be analyzed from an integrated perspective, through which scattered information is synthesized in a logical way⁷. In this sense, a qualitative approach was used based on the logical-deductive method, with an explanatory focus⁹. Thus, bibliographical research¹⁰ was carried out, including studies indexed in the SciELO and LILACS databases and textbooks published in recent years.

Literature review

Specialized literature has recorded the complexity of the dentistry professional's work in its most diverse aspects and skills. For Kak, Burkhalter and Cooper¹¹, clinical skills and personal attributes that include attitudes, self-control, self-confidence, communication skills, interpersonal interaction, and clinical reasoning are some of the components of competencies. That is a multifaceted, versatile, and comprehensive professional.

It is essential to highlight that the National Curricular Guidelines for the Undergraduate Dentistry Course inform, in Art. 5, that the professional must develop skills linked to the social context¹². In the analysis of Morita and Kriger¹³, this professional's curriculum presents skills and abilities originating from the human and social sciences, to which Zanetti¹⁴ adds collective skills.

In recent decades, this complexity has also been covered by legislation, with professionals

responsible for each product or service. In this sense, dentistry is regulated by Law 5,081/1966¹⁵, whose provisions apply to relationships between dental surgeons and patients in the same way as the Civil Code¹⁶ and the Consumer Protection Code¹⁷, given the existence of a consumer relationship in the provision of dental services.

While there seems to be no consensus on whether this professional's obligation is a means or a result, in Brazil, most independent professionals have a contractual obligation of means^{18,19}. Therefore, the dentist must act with dedication, care, and commitment, using the best technique and expertise. However, it is necessary to consider that the expected result may not be achieved. On the other hand, in result obligations, the professional assumes the implementation of this result.

Informed patient

Currently, the bond between dental surgeons and patients is very personal, and one of its pillars is information. The Code of Dental Ethics, when dealing with the relationship with the patient, provides in Art. 11 what is an ethical infraction:

IV – fail to adequately clarify the purposes, risks, costs, and alternatives of the treatment;

(...)

X – initiate any dental procedure or treatment without the patient's or legal guardian's prior consent, except in urgent or emergency cases²⁰.

In philosophy, Kant²¹ understood autonomy as a principle related to one of the most critical aspects of the human being—their will. From this perspective, as long as people can decide what they should or should not do, they are responsible for their actions. Based on this, it is understood that the patient needs to be able to understand and decide about their destiny voluntarily and that, therefore, information about possible risks and benefits of the procedures must be provided clearly and precisely^{16,21}.

Like other health sciences, dentistry has suffered from the attribution of a solid commercial focus to its activities²². In some cases, this occurs

because the patient who hires dental services aims for a specific result, not considering the possibility of different biological responses and/or complications such as rejection, pain, bleeding, and edema.

It is necessary to consider that, in some circumstances, patients themselves disregard, totally or partially, the treatment plan indicated for the clinical case, preferring to be subjected to procedures that they consider consistent with their interests. For this and other reasons, Latorraca, Flores and Silva²³ mention the importance of professionals providing detailed guidance to their patients about treatment options appropriate to the clinical case and recording them in the medical record.

Dental surgeon and obtaining consent

Every clinical case bears complexity and particularity since teeth and mouth are integral parts of a being, performing considerable physiological functions vital for health. Therefore, dentistry must be reconciled with the patient's choices and demands as a science and technique. The dental surgeon, aware of the impossibility of predicting all occurrences, is faced with the need to use informed consent.

In general, efficient communication and well-structured clinical documentation (medical records) are fundamental and often sufficient to prevent legal incidents. Efficient communication involves treatment alternatives, possible risks, effects, costs, the moment the procedure or treatment will be started, and the consent of the patient or their legal guardian²⁰. Just as patient behavior has been changing with the advancement of cultural and scientific development, professionals have been concerned with building a solid relationship with their patients so that treatment can occur transparently and friendly²⁴.

Currently, the professional-patient relationship is based on multiple normative instruments, such as the Federal Constitution of 1988²⁵, the Brazilian Civil Code¹⁶, the Code of Dental Ethics²⁰, and the Consumer Protection Code¹⁷. The latter even typifies

the relationship as one of consumption (consumer-service provider).

It should be noted that, besides having a merely defensive purpose as evidence in possible legal proceedings, the ICF formalizes a therapeutic relationship of trust, acceptance, and physical and psychological well-being between the dental surgeon and the patient.

For Roberto, informed consent is the *consent given by the patient based on knowledge of the procedure's nature and the risks, possible complications, benefits, and treatment alternatives*²⁶. Thus, it is clear that the process of clarification and consent is concomitantly the right and duty of both parties.

In a decision that reviews the judgment of a case whose object is the professional's liability, the Superior Court of Justice distinguishes between generic and specific information. Minister Luiz Felipe Salomão, rapporteur of Special Appeal 1,238,746/2010, made it clear that *there is effective fulfillment of the duty to provide information when the clarifications relate specifically to the patient's specific case, with generic information not being sufficient*¹⁹.

An issue that has not yet been appropriately resolved concerns what information should be provided to the patient. Pereira²⁷ reports the possibility of using the concrete patient's criteria, that is, providing the information that a given person, according to their cognitive set, needs and would like to know to make their decision.

Final considerations

This study did not aim to cover all aspects inherent to informed consent and its complex dynamics. Instead, it highlighted critical points, such as rights and duties implied in a consumer relationship defined according to the Consumer Protection Code and per the most current view of the Superior Court of Justice regarding specific information.

Considering bioethical and legal principles, such as rationality, autonomy (or self-determination), information, consent, and the concrete patient, the possibility of improving the current system for obtaining patient consent emerges, transforming it into a therapeutic process of trust and consequent informed choice. In this dynamic, one cannot forget the different types of people with unique characteristics, which rule out using a single standard in obtaining a declaration of will.

It is necessary to criticize merely formal consent to value informed consent, through which, based on understandable elements, the patient can consent, choose another alternative, or even refuse proposed interventions. The healthy relationship between dental surgeon and patient should not be reduced to signing a printed document with words and expressions that are often unread or understood. Furthermore, it is certain that the consent process is not an end in itself and that the absence of some information does not constitute a negligent attitude.

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Participation of the authors

Zilda Betânia Barbosa Medeiros de Farias and Richardson Silva contributed to the conceptualization of the study, construction of the theoretical framework, data production and collection, writing of the manuscript and the critical review. Márcia Maria Fonseca da Silveira and Ana Paula Veras Sobral participated in the construction of the theoretical framework and approval of the final version. Rebeka Thiara Nascimento dos Santos collaborated in the construction of the theoretical framework and the writing of the manuscript.

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