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## Human Consent

An examination of the bond of fidelity which must exist between physician and patient in order to achieve consent to medical procedure.

Rev. Clarence Deddens

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Informed consent is a statement of fidelity which exists in the medical context between the person who practices medicine and the person upon whom medicine is practiced. This fidelity exists between two persons, and the relationship thus formed can perdure only as long as the consent perdures. The withdrawal of consent eliminates that particular relationship. It is my general impression that this principle of consent is usually understood as the consent of the patient to the advice of the physician; however, I think it important to understand that this relationship between patient and physician is not a unilateral one, but a bilateral one. Thus, the consent of the physician to whatever course is finally settled upon is equally as important as the consent of the patient.

A word must be said here about the application of this to the two general areas of medical practice: experimentation and therapy. In the first area, that of medical experimentation, the purpose of this relationship of consent is the advancement of medicine and, therefore,

benefit to others. In the second area, that of therapy or healing, the purpose of the relation of consent is some benefit to the patient himself. In each case, both patient and physician join in the final product, that is, curing. Both consent, and both succeed or fail.<sup>1</sup>

This relationship between patient and physician is very much like what we understand as "covenant," in that it is an enterprise which requires a reasonably free and adequately formed consent, and it must be something ongoing.<sup>2</sup>

Dr. Paul Ramsey, who has written extensively on this subject, is fond of using Abraham Lincoln's quote that "No man is good enough to govern another without his consent," and applying it to this area by formulating the following: "No man is good enough to cure another without his consent."<sup>3</sup> I think Catholic moralists can easily agree with Dr. Ramsey that this holds without exception for ordinary medical practice, understanding the special requirements for children as well as the famous "Good Samaritan" laws where consent, if not informed, is at least implied. It seems, however, that even these are currently being threatened in the United States by the current paranoia over malpractice.

It is easy to see that in the area of research or medical investigation, the necessity of a reasonably free and adequately formed consent is the great safeguard which will protect the patient from the overly adventurous physician or medical investigation. This insight has been articulated in the various codes and declarations of the last 30 years: the Nuremberg Code (1947); Declaration of Geneva (1948, amended in 1968); Declaration of Helsinki (1964); Declaration of Sydney (1968); Declaration of Oslo (1970); and the Declaration of Tokyo (1975).<sup>4</sup> To this list most physicians, and particularly Catholic physicians, would want to add the various addresses of Pope Pius XII on these subjects, especially those in 1952 and 1953.<sup>5</sup>

A detailed examination of each of these codes is not within the scope of this article, although it would be an interesting study. It should be observed, however, that many of these declarations advance very well the cause of the principle of consent.

Leaving aside the thornier problems of consent in the area of research or medical investigation, it is my purpose to deal with a neglected parameter of consent in the area of therapy and examine the consent required of both patient and physician in the actual process of healing. We have already accepted above Dr. Ramsey's formulation — a formulation, incidentally, shared by many others — that the patient is to be reasonably free and adequately informed before he can give consent. Traditional moral theology in the Catholic Church might find a parallel in this by remembering the classical moral dictum of the obligation to follow not the conscience, but a *properly informed* conscience. This suggests the question: What can be said about the conscience of the physician versus the conscience of the patient?

Once a doctor has done his duty in discussing the prospect of success of a certain treatment or surgical intervention he will, after sufficient dialogue in which he attempts to allow the patient to come to a proper understanding, abide by the decision of the patient or of those persons morally and legally responsible.<sup>6</sup>

### Decision Sometimes Difficult

In some situations, this decision is difficult to accept for the physician and this is precisely the burden of our analysis in the present paper. One can quote here the classic example of the fully conscious adult patient who refuses a blood transfusion in accordance with the teaching of his religious sect. Must the physician abide by the patient's request to let him die? Also, the physician often finds himself in disagreement with his patient on some moral principle or its application. Here again, another classic example can be quoted of the doctor who, convinced that sterilization is the only reasonable approach to an illness finds that he must respect the moral conviction of the patient who is convinced that such sterilization is absolutely immoral. A third classic case is the duty of the physician who must give his patient proper health care even when he morally disapproves of the life situation in which the patient contracted the illness, for example, venereal disease contracted by a prostitute.

Here is where our point comes to focus. Just as the physician must respect the patient's conscience, so does the patient incur the same obligation towards his physician. A patient would be violating the relationship of fidelity by requesting a treatment which he knows to be against his doctor's conscience. There are cases in which the physician has a well-informed and firm conviction of conscience that a certain treatment or intervention is both immoral and harmful to the patient's well-being. He should expose the facts clearly. If the patient is unwilling to agree with the physician then the covenant of fidelity is rendered impossible, and the physician has no recourse but to withdraw from the case. The argument that the patient will nevertheless obtain what he wants from some other physician would never justify an action which is against the physician's conscience. In such a situation, the physician of sincerity and integrity would see the medical procedure as damaging to the ethical and moral good of the patient, and thus not for the greater good of the patient. Thus, the covenanted fidelity would dissolve itself in blocking the physician's consent to administer therapy.

How can the conscience of the physician be more important than his first and foremost task, that of healing? Why is the consent of the patient so important that it supersedes even the advice of the physician who obviously knows better? For what reason is a person allowed

to ignore the evidence of medical knowledge in favor of what one accepts as the particular beliefs of one's religious sect? In the last analysis, is the physician a moralist or a doctor?

The answers to these questions, of course, lie in the superior respect which is accorded to the conscience both by ethics as well as by morality. This respect finds official approbation in the latest version of the "Ethical and Religious Directives for Catholic Health Facilities" by the United States Catholic Conference when it says: "No person may be obliged to take part in a medical or surgical procedure which he judges in conscience to be immoral; nor may a health facility or any of its staff be obliged to provide a medical or surgical procedure which violates their conscience or these *Directives*."<sup>7</sup> The Fathers of Vatican II touched this basic idea even more deeply, and in a more general context, when they said "... that which is truly freedom is an exceptional sign of the image of God in man. . . . Man's dignity therefore requires him to act out of conscious and free choice. . . . (*Gaudium et Spes*, 17).<sup>8</sup>

### Proposal of Solution

As helpful as these guides are however, they do not give flesh and blood to the everyday problems of conscience which arise between physician and patient, patient and health care facility, and physician and health care facility. I would like to propose that a possible solution lies in the fact that sickness is to be understood not only as something physical but also as something emotional, moral and even spiritual. The physician must ask himself what, if any, second sickness does he create by healing the first sickness. The physician whose conscience is tortured by the fact that he cannot perform a blood transfusion on a patient who refuses it on religious pretexts must further inquire into his conscience whether or not he wants to force the blood transfusion and cure the first sickness, but then, in the process, create a second sickness in the patient who finds himself tortured because he violated his understanding of God's law. Likewise, a physician whose conscience tells him that artificial birth regulation is the only advisable course must also ask himself if, in his intentions to alleviate suffering, he is not at the same time unwittingly contributing to a vicious non-child mentality.

Basically, unless the curing process is truly human, the cured becomes less human. The temptation to abuse the curing process because of a mentality of consumerism or a desire for instant happiness can cause the conscience to become less free. We must understand that the medical process, committed as it is to health, must subject the concept of physical health to the greater concept of total health, that health

which is sufficient not only for physical happiness but also, and most importantly, for eternal happiness.

As a fellow pilgrim with the patient, the physician quite properly sees as his province the total happiness — not merely the physical happiness — of the patient. Conflicts of conscience will therefore be resolved from this basis in covenant. Perhaps Dr. Ramsey's formulation must be amended to read: adequately informed, reasonably free, *and* totally human consent.

## REFERENCES

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