IN BRIEF

- Analysis of official guidance on consent.
- Explanation of the concept of continuous consent.
- A suggestion of how to further safeguard patient dignity in dentistry.

# Continuous consent and dignity in dentistry

D. Shaw[1]

Despite the heavy emphasis on consent in the ethical code of the General Dental Council (GDC), it is often overlooked that communication difficulties between patient and dentist can cause problems in maintaining genuine consent during interventions. Inconsistencies in the GDC's *Standards for dental professionals* and *Principles of patient consent guidelines* are examined in this article, and it is concluded that more emphasis must be placed on continuous consent as an ongoing process essential to maintaining patients' dignity in dentistry.

## COMMUNICATION

Dentists know that their work by its nature entails a certain degree of discomfort for their patients. They strive to keep up a conversation with their patients, warning them about potential pain and keeping them informed about exactly what they are doing. However, the patient very often cannot reply, for the simple reason that the dentist is working inside their mouth.

I visit my dentist for routine check-ups. Quite often I have wanted to withdraw consent due to intense discomfort, but instead 'gritted my teeth' and let the dentist get on with it. Once or twice I even gestured that I wanted my dentist to withdraw, but she didn't notice. Now, my discomfort was only that; nonetheless, I attempted to communicate my discomfort, and was unheeded. Had it been a doctor examining my belly, or a chiropodist looking at my feet, this simply would not have been an issue. This is the fundamental difficulty that confronts general dental practitioners but not general medical practitioners: the latter can normally engage in full dialogue with their patients, while the former frequently cannot.

Of course, dentists discuss the procedures they are going to perform and obtain consent from patients before beginning. But in effect, my attempt to get my dentist to withdraw was basically an attempt to temporarily withdraw consent. Despite her good intentions, my dentist failed to respect my autonomy, even if by accident.

## CONTINUOUS CONSENT

The term 'continuous consent' is most commonly used in clinical research ethics to refer to the process of reobtaining consent during a trial in order to maintain participants' autonomy. However, it is accepted in biomedical ethics that patients can withdraw consent at any point, and that consent is an essential component throughout patient care. Unfortunately, despite some references to consent as a process in dental guidelines, these codes seem to neglect key aspects of continuous consent.

The GDC's standards guidance *Principles of patient consent* states that 'Giving and getting consent is a process, not a one-off event. It should be part of an ongoing discussion between you and the patient'.[1] Two points need to be made here. Firstly, this advice comes close to being contradicted by advice in the same document, which states that 'It is a general legal and ethical principle that you must get valid consent before starting treatment or physical investigation';[1] this implies *only* before starting treatment, and seems to suggest that it is, in fact, a one-off event. Secondly, it is interesting that the word 'discussion' is used, as discussion is often impossible during an investigation or treatment (henceforth both will be called 'interventions'). Of course, the document is primarily intended to cover consent *between* interventions, but consent is indeed a process, and the lack of communication between patient and dentist (although hopefully not in the opposite direction) raises issues about the quality of the consent being given; is it truly continuous?

Similarly, the Code of Ethics of the Council of European Dentists states that dentists 'must obtain appropriate agreement or consent from the patient for the treatment which is to be carried out. To this end, information must be provided about the proposed treatment, other treatment options and relevant material risks'.[2] Once again, consent is seen as being one isolated event.

[1]Dental School, Faculty of Medicine, University of Glasgow, 378 Sauchiehall Street, Glasgow, G2 3JZ
Correspondence to: Dr David Shaw
Email: d.shaw@dental.gla.ac.uk

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To its credit, the GDC guidance does state that 'Once a patient has given consent, they may withdraw it at any time, including during the procedure.'[1] But such withdrawal is not always straightforward, as already mentioned. First of all, I may want to withdraw consent but do not, because I know my suffering will be worth it. Secondly, it would not be practical to ask the dentist to withdraw from my oral cavity every time I feel discomfort, as the procedure would never be completed. And thirdly, the very continued presence of the dentist's fingers in my mouth implies that she thinks that this is necessary for my oral health. The GDC guidance states that dentists should 'not pressurise the patient to accept your advice'.[1] Again, this means before an intervention, but if your dentist is fixing your teeth at a particular moment, it is obviously a tacit form of advice to let her continue. And although the advice is tacit, the pressure is explicit. This may be an overinterpretation of the guidelines, but is necessary in the absence of any advice addressing consent and advice *during* interventions.

The GDC guidance on 'Ability to give consent' suffers from the same problem. It seems to focus solely on issues of mental competence, stating that 'Every adult has the right to make their own decisions and must be assumed to be able to do so, unless they show otherwise.' [1] Once again, the mid-intervention patient can certainly make his or her own decisions, but such capacity is of little value unless the means of expressing them are also present.

The GDC's general standards guidance *Standards for dental professionals* also has this flaw. It states that dentists should 'Recognise and promote patients' responsibility for making decisions about their bodies, their priorities and their care, making sure you do not take any steps without patients' consent (permission).'[3] But moving from the front to the back of the mouth is a 'step' in itself; dentists certainly do not always inform their patients before they make such a move, potentially (for example) making the patient gag. Again, the emphasis is on consent between interventions, despite the fact that consent is really required for each individual step during interventions.

The lack of emphasis on consent as a process is not limited to guidance documents. The recent *BDJ* article *Consent to orthodontic treatment – is it working?* examined the level of patient recall of consent.[4] Among their other conclusions, the authors also stressed that 'consent should be seen as an on-going process', echoing the recommendation of the GDC guidance documents.[1,3] But it is clear from the paper that this 'on-going process' is regarded as something that happens *between* interventions, rather than both between and during interventions. It states:

*...if consent is to be considered a process, it can also be argued that during treatment, as procedures are repeatedly discussed with patients, then clinicians are making consent an ongoing process with the patient able to withdraw from treatment at any time.*[4]

'Treatment' is here used to mean 'treatment cycle', with the patient returning to the dentist several times to complete treatment. This should be distinguished from the more accurate sense of 'during treatment', ie when the dentist is performing an intervention. This must be the case, as true discussion cannot be possible if the dentist is simultaneously treating the patient.

The questions used in the study reflect this concept of consent only being given before and after treatment. Of 20 questions, 13 refer to discussion prior to signing the original consent form, and only one mentions the idea of consent being an ongoing process: 'Once the consent form was signed were you told you could still change your mind at any time?'[4]

## LEGAL ASPECTS OF CONSENT

It might seem that the concerns addressed in this paper are trifling; do we not just have to accept that such minor violations of autonomy occur as a matter of course? Regardless of whether this is an acceptable ethical response, there are also legal considerations here:

*English law respects a person's autonomy and specifically protects a person's bodily integrity through the tort and crime of battery. Battery can be defined as any intentional non-consensual physical contact. Thus any dental treatment which requires the dentist to touch the patient amounts to a battery and is unlawful unless done with the patient's consent... This is so despite the fact that the treatment is beneficial to the patient and has been carried out with reasonable skill and there is no hostile intent on the part of the dentist... The patient's consent licenses an otherwise unlawful act.*[5]

In Scotland it is the law of delict rather than tort that applies, but the application of the law is virtually identical.[6] The key point, though, is that *any* intentional non-consensual physical contact constitutes battery. Therefore, even if the patient decides to put up with the pain and not continue to try to withdraw consent, the fact that he wants to and is unable to could be interpreted as breaking the law.

Of course, if the patient *really* wants the dentist to stop, s/he can communicate it, but the situation can quite easily arise in which the patient wants to withdraw consent, cannot, and therefore decides to continue to assent to treatment for practicality's sake. Such a situation could perhaps be described as a momentary violation of consent.

## CONCLUSION: DIGNITY IN DENTISTRY

It is an unfortunate irony of dentistry that the consented-to 'indignity' of having the dentist put his or her fingers or instruments into one's mouth can lead to the indignity of being unable to effectively communicate withdrawal of that consent. Is there any way in which this problem of inarticulable withdrawal of consent can be solved?

The most obvious response is that if the patient really wants the dentist to stop, and verbal communication is not an option, he or she can put his hand on his or her arm, or even try to push the dentist away. This is certainly true, but is also far from ideal; even laying aside the concern that this is almost like physical restraint, it might leave the patient liable to (unfounded) charges of harassment.

It could be said that doctors' patients who are unconscious, but have consented to an operation beforehand, are also denied the opportunity to withdraw consent. But here, they are not experiencing pain or suffering, and are in fact merely undergoing what was agreed to. The dental patient who attempts to withdraw consent, however, might well do so because the procedure is much more painful than s/he had envisaged, or much less comfortable. In this sense, the initial consent could be considered invalid due to the patient not fully understanding what was involved in the intervention.

In any case, the patient in such a situation seeks to withdraw their consent, but is unable to do so. However slight a harm this is, it is a violation of autonomy and should be avoided. Can it be?

There does not seem to be any practical solution to this problem. It is the very nature of the dentist's work that it renders patients unable to communicate properly for the duration of the intervention. But although nothing can be done that will prevent such minor abuses of autonomy, existing ethical codes ought to be revised to take account of the fact that patients are often placed in the awkward position of being unable to effectively withdraw consent. They should also put clearer emphasis on the idea that consent should ideally be continuous, not only before and between courses of treatment, but during each and every intervention. Although true continuous consent might be technically unachievable in dentistry, acknowledgement of this fact in official guidelines would provide a further safeguard of patients' autonomy and dignity.

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