



Reasonable Care

LEGAL PERSPECTIVES ON THE DOCTOR/PATIENT RELATIONSHIP

by Harvey Teff

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As the concept of biomedical ethics has evolved during the past thirty or forty years from an essential tenet of medical practice to a movement (and academic specialty) of its own, informed consent has been the standard by which ethical behaviour is often judged. Those with a long memory or knowledge of medical history know that, even in the early days of this century, it was common in the West for physicians to withhold from patients a diagnosis of serious illness. That is still the case in Eastern countries (Japan is an example) and certainly is known still to occur with modest frequency in Britain and Europe.

Nevertheless, the doctrine of informed consent is now a dominant in Western practice, as *Reasonable Care* by Harvey Teff so clearly lays out. Teff, a professor of law at the University of Durham, (Durham, UK), is among a group of legal scholars who have analysed various legal cases on informed consent for the benefit of lawyers and physicians alike. He is one of the few who succeeds. Teff's writing is

not dazzling but it is lucid. In addition, he sensibly has limited himself to discussion of perhaps a dozen prominent cases, thereby permitting a reasonably complete description of the issues, while also selectively drawing comparisons among the ways courts in Britain, the United States, and Canada have responded to similar cases in which a patient claims to have been denied adequate informed consent.

For instance, Teff notes that British courts, though thoroughly supportive of the concept of informed consent, accept a physician's defence that whatever he told his patient was consistent with what other physicians would have said in like circumstances. Thus, we see what Teff calls a more "paternalistic" or physician-centered approach than in the United States, for instance, where informed consent documents list in meaningless detail every conceivable adverse outcome of any medical or surgical procedure. If, in some countries, the 'informed' patient remains partly dependent on what the physician decides is pertinent information, in the United States the patient is often confronted with a document that looks as if it had been written by someone at the Internal Revenue Service.

But an overemphasis on either paternalism or patients' rights' as legal concepts seems somehow beside the point. Toward the end of his book, Teff cogently argues that the real value of informed consent is neither to protect physicians from the law nor to arm patients in an adversarial relation with their doctors. Patients who are preoccupied with their rights are not likely to really hear whatever their physicians have to say. Likewise, physicians whose interest in informed consent is primarily as a legal defense are not likely to genuinely communicate with their patients.

Teff summarizes it nicely: The expression 'informed consent' is not clear on the face of it. When we say that a person has been informed about something, we signify merely that he or she has been told about it. To say that someone has made an 'informed' decision, however, suggests a process of deliberation based on understanding. An unfortunate ambiguity of 'informed consent' as a medico-legal concept is the way in which the phrase elides the distinction between the comprehending patient and one who has been merely notified.

The law, the medical profession, and those who have made a profession of

protecting patients' rights would do well to pay close attention to the distinction. In too many legal cases, physicians are exonerated just because they can demonstrate they conducted what amount to "disengaged monologues" with their patients. Teff suggests that the law itself could come to the rescue of doctor and patient alike by fostering what he calls the model of "collaborative autonomy" in medicine — one in which the doctor actually talks with the patient and the patient listens and asks questions. Teff is absolutely right in suggesting that this revised model of physicians' obligations and patients' justifiable expectations would help to get the courts out of the hospital room and foster healing at the same time. (Lacking naiveté despite his idealized view of what informed consent should be about, the author also recognizes that as cost-containment becomes the dominant force in medicine and doctors and patients are restricted to three or four minutes together, his notion of collaborative autonomy is not going to strike a chord with the people who control access and seek savings in Britain, Canada or the United States.)

That said, Teff is onto something important. He is not the first to think of it. But he makes his points succinctly and it is instructive to think about using, or reforming, the law so that it becomes an instrument of healing rather than division between patients and their doctors.

Other Books Received

Cultures of Healing: Correcting the Image of American Mental Health Care by Robert T. Fancher
W.H. Freeman, New York, 1995,
\$23.95, ISBN: 0-7167-2383-2

The Pill: A Biography of the Drug that Changed the World by Bernard Asbell
Random House, New York, 1995,
\$25.00, ISBN: 0-679-43555-7

HIV-Negative: How the Uninfected are Affected by AIDS by William I. Johnston
Insight Books, A Division of Plenum Publishing Corporation, New York, 1995, \$24.95, ISBN: 0-306-44947-1

Turning Point: The Myths and Realities of Menopause by C. Sue Furman
Oxford University Press, Oxford, 1995,
£14.99, \$19.95, ISBN: 0-19-508773-9