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Implied Consent and nursing practice – Ethical or Convenient?

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Abstract:	Implied consent is routinely used by nursing professionals in a variety of contemporary practice settings. This form of consent is used in place of or in conjunction with informed or explicit consent. This article looks at one aspect of a qualitative exploratory study conducted in a Day of Surgery Admission (DOSA) unit. This study examined nurses' understandings of implied consent and its use in patient care in contemporary nursing practice. Data was collected through one-on-one interviews and analysed using a thematic analysis. Nurses participating in the study revealed that they routinely used implied consent in their nursing practice. This article will look at whether implied consent supports or impedes a patient's autonomy.

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Introduction

It is important for health professionals to understand the complexity of the consent process, as the health professional has a major role in ensuring that the three precedents of consent are fulfilled. The three precedents of consent ensure that the

choice made by the patient is made voluntarily, without coercion, and that the patient comprehends the choice that they are making.[1] Health professionals need to understand the concepts and complex meanings that influence and underpin their actions in relation to the process of consent.

The need to obtain consent during routine nursing care, whether informed or implied, is not under debate. The use of implied consent is commonplace in many contemporary healthcare settings. The question that needs to be reviewed is whether relying on implied consent when providing nursing care to patients is ethical in relation to upholding and promoting patient autonomy.

Autonomy is perhaps the most influential ethical principle and the main focal point in healthcare.[2, 3, 4] Autonomy is a major concept in relation to consent and in its simplest form can be seen as the patient's right to determine what will be done to his/her body. [4,5,6] The process of consent is designed to protect the autonomy of the patient and their ability to self-determine.[7]

As many of the nursing care procedures undertaken in contemporary practice have the potential to limit a patient's autonomy, it is then important that nurses understand autonomy in relation to consent and nursing practice.

Aims of the Study:

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The aims of this study were to examine the nurse's role in the informed consent process and how nurses used implied consent before nursing care procedures. This article reports the findings of part of this larger qualitative study by focusing on implied consent and patient autonomy in contemporary nursing practice.

Literature review:

Working within DOSA, the clinical needs of the patients are significantly different to those patients admitted to a ward environment.[8] The literature specifically around the clinical area of Day Surgery is limited especially in relation to the nurse's role in the consent process.

Implied consent

Many nursing procedures are done with implied consent rather than explicit consent.[9] Implied consent can be defined as an intervention that is performed without explicit consent.[10] It is based on the observation of a person's behaviour that they would agree to the intervention.[10] There is usually no formal verbal or written permission given.[11, 12] It is recognised that most nursing care provided would fall under implied consent provided a minimal explanation is given to the patient to explain the nurses' actions.[13] Touching patients without consent can lead to nurses acting unlawfully and failing in professional standards.[14]

Autonomy

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Ethically, a person has the right to make their own decisions about their treatment without interference.[15] Autonomy can be described as the ability for an individual to self-rule; and to have self-governance; or self-determination.[16, 17,18, 19, 20]

As an ethical principle, autonomy can be seen as formative in relation to the codes of conduct, ethics and practice standards, which guide contemporary nursing practice.[21] There are many competing factors influencing autonomy, including health and illness, and this principle is seen as an obligation of the health care provider or the institution to promote and uphold for the individuals.[22]

With regard to ethics, consent is a manifestation of autonomy, which is the philosophical justification of consent.[23, 24] The process of consent is designed to protect the autonomy of the patient and their ability to self-determine.[7] The importance of consent and the concept of autonomy become the overriding ethical principle for the basis of consent. It is the ethical principle of autonomy on which information disclosure and the process of consent is based upon.

Method:

This interpretive exploratory study investigated DOSA nurses' perceptions of their role in informed consent. Data was collected using semi-structured, one-on-one interviews guided by the opening statement of '*tell me, in as much detail as you can, about your day*'. Participants using purposive sampling were recruited via a letter of invitation. Eight registered nurses volunteered to participate in the study and were provided with a Plain Language Information Statement (PLIS) and Informed Consent

Form. Ethical approval was received from the University of Ballarat Human Research and Ethics Committee (HREC).

Interviews were audio-taped and later transcribed by the researcher to assist in the manual thematic analysis and extraction of significant statements.[25,26,27] Validation of transcripts for authenticity was facilitated by returning the transcripts to participants to read.[28,29] The identified themes and statements highlighted the nurses' experiences and their perceived meaning of their role in informed consent.[30,31] Excerpts from transcripts were used to preserve the uniqueness of participant responses but also permitted an understanding of the phenomena of interest.[32]

Results:

From the interviews conducted, the participants illustrated their understanding of what implied consent was and how it was used in clinical practice. Many of the nurses were able to give a reasoned and explained definition of implied consent in their daily practice.

When discussing nursing procedures, the concept of implied consent becomes an important consideration. Implied consent is a form of consent routinely used by nurses when performing nursing procedures. It is recognised in the literature as being utilised by nurses to perform routine care for patients. Most nurses presumed that introducing themselves to the patients along with a brief explanation of the particular procedure is sufficient for the patient to give implied consent. Many

patients' enter the hospital expecting to have certain procedures completed by both the medical and nursing staff.

One participant reflects on implied consent within DOSA.

> I think…the initial introduction and letting them know what you are going to be doing. I guess that I assume that when I say hi my name is … I am going to admit you…. start by doing your vital signs…I assume that the patient would say that they are not happy to do that…. I guess that by introducing myself I have their consent if they don't say I am not happy for you to do that.

Another participant describes it within the context of taking a blood pressure.

> …. you are looking at them saying okay, well now I am going to take your BP….looking at them for the consent, where they put their sleeve up…

One participant was asked to reflect on a time in clinical practice where the use of implied consent would not be sufficient and when nursing staff should introduce a framework of informed consent.

> …. most people come into the hospital with the expectation that certain things are going to be done…it all depends on how you talk to people and how you approach the subject…. in a sense you are informing them what they are in there for.

Another participant who described implied consent as being appropriate as many patients have certain expectations of what hospitalisation entails also highlighted this.

> I think when patient's come into hospital they expect these thing to be done to them and I think that's probably implied consent.

One participant described implied consent as being like an unspoken contract between the nurse and the patient.

> I think it's not a direct can I take your BP… it is very much an unspoken type of contract….I find that most people are offering their arm before I have even reached the machine.

One participant also described is a sense of intuition that the nurse has with interaction between the patients.

> …it is something, you just get the feeling or it seems obvious that it is okay for you to do it….You don't need to ask a patient every time you need to do something.

When participants were asked to relate and compare the processes of implied and informed consent, to determine what they thought would be more clinically appropriate, nurses highlighted the fact that no matter what framework they used, they still were required to provide an explanation of care they were giving to the patient.

> …When you are giving medication I would say this is Heparin… it is a drug to help with clotting…. I would always explain what I am doing to the patient.

Another participant also highlighted this as an important part of implied consent

> …. I don't think I have ever had anybody refuse but I can see someone who is of a different background or rarely in hospital that they may not understand and my explanation might not be enough so then you would need to probably give them more explanation and hopefully they can understand it.

When asked whether the nursing profession should move from using implied consent to a more structured framework of informed consent a participant stated that

> No, I don't think that you need to… it's trying to make nursing more regimented where you are trying to build up a therapeutic relationship with the patient and by them implying consent…

Another participant also highlighted this viewpoint

> Yeah, I'm not sure. I think for some things it might be difficult to do… You wouldn't want to have to do it for everything because there are quite a number of little things that we do for every single patient all the time.

The findings reported in this article are a summary of part of the findings of the full study. These results indicate that nurses working within the DOSA unit routinely use the process of implied consent when providing routine nursing care to patients.

Discussion:

This study was exploratory in nature and the aim of the research was to generate an overall picture about consent within a specific clinical setting. There were several other areas of interest arising from this research but these have not been explored in the context of this article. Therefore readers need to understand that this is not a comprehensive account of consent within DOSA but it allows for investigation into a previously unexplored topic.

Currently, in the DOSA unit, there is a reliance on implied consent for performing what is seen as routine nursing care. As discussed from the findings of the participants there was an overall consensus that implied consent was routine practice, unless the procedure or care was seen to be invasive in nature, and then nurses would tend to revert to a more formalized consent procedure, such as that found in the informed consent process. The question that needs to be addressed is in relation to whether implied consent is actually beneficial to the patient in relation to patient autonomy and supporting the patient's right to consent to or refuse treatment.

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Autonomy has become the prevailing bioethical principle influencing the healthcare professionals' interactions with patients.[33] Autonomy can be defined as the right to non-interference and self-determination.[34] Autonomy allows the patient to make self-determining choices independently and to display reasoning and decision-making capabilities.[35] This is further described as allowing the patient to choose their medical treatment and allows them to consider the risks and benefits in relation to their personal situation and individual values.[36] Patient autonomy is the basis of informed consent and influences the relationship between the nurse and the patient.[19]

When making treatment decisions, the patient is required to have sufficient information; advice and support of the treating healthcare professionals; and the autonomy to make the decision.[37,33,38] Patient autonomy relies on the patient having been educated regarding their treatment options and that this education has been understood and communicated with the patient. Therefore to enable and encourage patient autonomy the nurse requires in-depth knowledge of, and interaction with, patients in the context of each particular nursing encounter.[19]

DOSA Nurses believed that patient autonomy was enhanced by advocacy, communication, and education provided to patients. These factors were described as influencing the formation of a therapeutic relationship between the nurse and patient, which was considered by the participants to be vital to the delivery of comprehensive nursing care. DOSA nurses assisted patients in their decision-making through the

education of patients by providing information in a comprehensible manner for each individual patient within a supportive environment.[39, 40, 41, 42, 43]

Advocacy in contemporary nursing practice is another grey area that needs to be further explored. DOSA nurses saw this role as being essential in their clinical setting. It was discussed that being an advocate for patients ensures that care promoted patient autonomy and centered the care provided back into the patient domain.

In relation to the concept of consent, a patient requires a supportive environment to integrate and make sense of complex medical information given to them.[44] This is where the concept of communication, by all healthcare professionals, plays an important role. Communication functions in the ability of a person to obtain and receive information, which is fundamental to the consent process.[45] Communication, in the context of consent and supporting patient autonomy is a negotiation process that occurs within the social context of the patient.[19] This is an important concept in relation to patient autonomy.

Communication was seen to be very important by the participants. It was also discussed about the lack of communication that can sometimes occur in the DOSA unit. This was found to be due to time constraints in relation to theatre schedules. A nurse has a very limited time period with a patient while performing their admission paperwork. This usually means that the nurses have to be very succinct and to the point in relation to asking the necessary questions of the patients. At times however, due to the patient, this is almost impossible to achieve. In these instances, this is

where the individualised, holistic needs of the patient are required to be put first so that the patient feels the process has been beneficial and supportive to their needs and wants.

The question remains on whether implied consent should be the golden standard in relation to contemporary nursing practice, consent and patient autonomy. Implied consent, although it seems to support the concept of patient autonomy, still relies on the nurse to make some of the decisions for the patient rather than the patient having the autonomy to make their own decisions. Of course, if a patient does exert their autonomy, which may be as simple as refusing medications, it is always the nurse who then uses their varied skills to encourage the patient to be compliant with suggested treatment options.

This can be seen as a paternalistic in nature, and reverts nursing practice back to earlier days where the treatment provided to patients was rarely discussed with patients and care was 'done to' not with patients. Even though undergraduate programs now emphasise the bioethics of nursing care, it is still apparent that there is still the potential to slip back into that paternalistic framework of delivering care.

Patient autonomy, while supported during the nursing process in the DOSA unit by several different factors, can still be compromised. Patient autonomy, relies on both the expertise and the knowledge of the individual nurse, and on the patient and their ability to make and support their own healthcare decisions. It then becomes the nurses' responsibility to encourage patient autonomy by providing a supportive

environment to allow for patients to make their own choices regarding their healthcare treatment and options.

Overall, the majority of nurses shared a common notion that informed consent processes intricately involved nurses throughout, and facilitates patient autonomy using techniques such as advocacy, communication and education. This study has opened the door to do more comprehensive research into the areas of autonomy and advocacy in contemporary nursing practice.

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Conflict of Interest Statement

The author declare(s) that there is no conflict of interest

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