

Clinical practice of informed consent in the Chinese context: From retrospection to perspectives

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Introduction

Since the Nuremberg trials, which presented horrifying accounts of medical experimentation in concentration camps, the issue of consent has been at the forefront of biomedical ethics. In recent years, the focus has shifted from the physicians' or researchers' obligation to disclose information to the quality of a patient's or subject's understanding and consent. The forces behind this shift were highly autonomy-driven while respect for autonomy is often "triumphs" for contemporary Western Bioethics (Schneider, 1998; Tsai, 2001). An informed consent is an autonomous authorization by individuals, with substantial understanding and in substantial absence of control by others, to a medical intervention or of involvement in research (Beauchamp & Childress, 1994). The concept of informed consent was firstly discussed in the discipline of bioethics in the western culture, it has also been commonly practicing and becomes an important concern in medical health care system throughout the world in the recent three decades (Tsai, 1999). In China, the concept of informed consent was first introduced in 1980's but its pace of development is much slower than in the western countries. Then, what is the reasoning behind this phenomenon? What is the current practice of informed consent in the China? In what approach should informed consent be applied in the contemporary clinical Chinese context?

Philosophical, ethical and legal perspectives

Pang (1998) explored that the moral principles of respect for the sanctity of human life and the protecting patients' best interests appeared in the first medical book, the Yellow Emperor's classic of internal medicine, written in the Period of the Warring States (400 BC-240BC). It states that 'among all things that exist between heaven and earth, humanity is the most precious form of existence'. Hence, health care

professionals have a moral obligation to save human life to the best of their ability. At the same time, to save or precious a human's life in Chinese culture have a couple of meanings. "Person" is traditionally regarded as an individual unit of human being, who consists of physical, psychological and social aspects. To save or treasure a human's life means not only to maintain one's life but also to protect him/her as a holistic person (Pang, 1998; Qin, 1989). And the traces of these social and ethical values are well reflected in the laws and regulations in China. In the article 26 of "Physician's Law", it says "physicians should tell the truth of the illness to the patient or to his or her family, but physicians should also avoid the negative effects brought about to patient after disclosure" (中國衛生部, 2004). In this article, physicians are bounded by law to choose to inform either the patient or his or her family (仇永貴、倪松石, 2001a; 仇永貴、倪松石, 2001b; 戴慶康, 2002). We could also find that Chinese physicians are responsible to weigh the effects of disclosing information to individuals and make the decision of disclosing or not to the patient whom indeed ought to know according to the central idea of informed consent (Orona, Koeing, & Davis, 1994). However, in one empirical study, most of the patients respond that they would like to know and they want their right of being informed to be respected (國秀娣, 2002). And patients themselves do not put much focus on the right to consent, they believe that the physicians know better or the best so as not to have much desire to claim for their own decision-making. These findings are also illustrated in other literatures (Lee, Machenzie, & Chien, 1999; 聶精保, 2002). On the other hand, we could see that instead of disclosing to the patient, the physician can choose to disclose to the family at the expense of the patient's right to know or respecting complete confidentiality, with the motive to protect those vulnerable patients by fostering substitute or surrogate decisions that may represent the patient's best interests (Pang, 1998; Pang, 1999).

To reason this phenomenon, we should seek to the long tradition of Chinese culture. Chinese culture was shaped by the three Teachings: Confucianism, Taoism and Buddhism (Qiu, 1989). Moral intuition as well as moral attitudes towards medical ethical issues and resolution of ethical dilemmas (at lay, professional, and societal levels) are affected by the longstanding entrenched traditional values. The central theme of Confucius' ethics, "humaneness"(ren) which in the Chinese character means two persons, reflects the idea of relational personhood or interpersonal transactions in human society (Bowman & Hui, 2000; Tsai, 2001). That means, when a doctor approaches his patient, he sees persons not only as an individual moral agent but a small self encompassed by one or many greater selves (王曉燕、董平, 2002). "Person", "family", "clan" and "community" are complementary rather than mutually exclusive, exist in a dynamic state in the society. In medical practice, the family, more than the individual is often considered as one basic unit in the doctor-patient relationships. Medical ethical decision making tends to respect the opinions and decisions made or agreed to by the family as a whole and this act is generally accepted by various communities, families and individuals, thus serving as an objective or impersonal conception of the good (Fan, 1997; Mok, 2001). The common good may cause the patient to reconcile the right of autonomous decision-making with the preferential choice of the families or social values (Tsai, 2001). Thus, autonomy can only be spoken of as a collective right rather than an individual privilege (Tai, 2001) and this social background can explain that the "beneficence-oriented" rather than "autonomy-oriented" approach is conducted in the Chinese society (Tsai, 1999).

Given the concept of relational personhood, the emphasis on family values "filial piety"(Shiaw) is highly weighted in Confucianism, the responsibility for caring sick family members and the interdependence between family member must be taken seriously. It follows that family members also bear the responsibility to decide whether they would or would not conceal information from the patient even when the patients themselves are competent (Pang,

1998). To fulfill filial piety, dying elderly patients are always protected from fateful news or information nondisclosure is often adopted by the family members if considering disclosure would cause possible psychological harm to the patient precedes all other considerations. In both ethical and legal aspects, the Chinese physicians together with the family have legitimate responsibilities to have a paternalistic attitude in their dealings with patients. It is supported by justifications that this information nondisclosure act fulfils both principles of nonmaleficence and beneficence and the motive of this act on the whole is good (郭繼紅, 2000). So, they will not find it ethically troubling to withhold information from patients if in their judgment disclosure is non-beneficial to the patients.

Current Clinical Practice of Informed consent

Originated from the core value of informed consent, it comprises two main ideas, one is to respect the patient's right of being informed and second is to respect patient's right of making autonomous choice. Indeed, they are two separate actions in which substantial understanding and self-decision are the central idea of the practices. In China, since the introduction of informed consent, there is a rise of concern with this issue and it is not difficult to find the practice of informed consent in the health care activities. However, many studies report that there is a general misunderstanding or alien attitudes established among the health care professionals. First, the physicians still have attitudes that it is helpless to give professional explanation to the patient who is a layperson to really get well understanding and they prefer practice in a paternalistic way (戴慶康, 2002). Second, informed consent is simply used as a strategy to gain cooperation with the patient. To tell the patient about his or her illness and medical interventions carries an attention of guarantee to the performance of their proposed treatment, but not to pay attention to the choice and will of the patient (孫福川, 2001). Third, informed consent is practiced in a way of merely obtaining a signature of authorization on a consent form

in the clinical context, which makes informed consent a word and paper game (郭繼紅, 2000). Fourth, with the emphasis of obtaining a consent signature, the intentions of the health care professionals are always the desire of avoiding conflicts with the patient or patient's family. In case that accident happened during the treatment process, for example surgical operation, the health care professionals are protected from legal accusation because all possible consequences are stated in the pre-operation consent form and the patient or the family are supposed to be informed after making the signature (馬先松, 2003; 楊紹珍, 2004; 聶精保, 2002; 鍾光林、張寶珠、李澤平、朱士俊, 2002). Obviously, the practice of informed consent contributes to the formation of a defensive medical system (蘇榮剛、鄧延杰, 2002). Fifth, the validation of the practice of informed consent is not included as an item to be assessed by the Healthcare Regulatory Body of China (郭繼紅, 2000). All in all, informed consent becomes a "formalized act", an act which weighs the consequences (consent) more than the process (informing). It is ultimately lacking the central idea of individual's understanding and autonomous choice. The professional attitude and understanding to informed consent are determinants to the slow development of informed consent in China.

Future Scope of Informed Consent Practice

As China has been undergoing the social and economic reform, people nowadays could have more opportunities to communicate with the other cultures, the Western cultures explicitly influence the traditional living of the Chinese especially in the exchange of knowledge. People may soon come to realize their rights to autonomy. This may prepare for the doctor-patient relationship to change from the present "Teaching-Cooperating Model" to the "Mutual participation Model". "Mutual participation Model" is considered to be an optimal doctor-patient relationship when the Chinese population is changing to a chronic disease pattern in the near future (張鳳秋、吳纖芬、郭照江, 2000). Meanwhile, the health care insurance system in China leaves a large room

for the open market, more and more Chinese have to pay their own medical fees. Therefore, there is a direct economic relationship between the health care institutions and the patient, the patients play the role of clients and health care services serve as products. As the patient pays, they will have specific expectations to the services they are going to receive, and their requirements and needs for the services are expected of being respected. Research findings showed that patients' expectation for being sufficiently informed is far beyond the patients' satisfaction on the current practice of informing by the health care professionals (王青, 2003; 國秀娣, 2002). In this case, a "Mutual participation Model" of doctor-patient relationship comes to be important and necessary. Obviously, this model of relationship couldn't be well carried out without the revolutionizing the practice of informed consent.

In recent years, some scholars have been trying to investigate the needs of the patient in the issue of informed consent. One supports that the psychological harm to the patients would be reduced rather than increased if information disclosure is adopted (黃佐、趙君、吳宗貴, 2001). Patients think much more of their "Right to be informed" than their "Right to consent", 67% of the patients chose to hand up their "Right to consent" to the physicians, this may be due to their long passive receiving and trust on the professionals (國秀娣, 2002). In 2004, 14 hospitals and 1 journal announced their position statements on informed consent by stressing the responsibility of the physicians in respecting the autonomous rights of the patients. They shifted their attention from informing the family to the individual patient (首都醫科大學宣武醫院等, 2004). "Patients' understanding" should be the aim of the physicians and only this can meet the shift from society benefits to individual's benefits in the new era (孫斌, 2005).

Indeed, it is truly impossible to abandon the participations of the family completely at once. Instead, a 'whole family-oriented approach' can be adopted. That is, to recognize a family as a whole which includes both the individual patient and the patients' families. Informed consent is neither carried out only by the

family nor only by the patient. Under the condition that the right of the patient to informed consent is respected, the family's right to be informed can be discussed and retained (胡碩, 2003). Then, this can respect the patient as an individual on one hand and respect the traditional relational personhood of the Chinese family on the other hand. The 'whole family-oriented approach' should be a way out to the balance between the West's self-oriented and Chinese family-oriented practices.

Conclusion

Informed consent, being a prioritized issue in the western society, has been coming into the ethical arena of China. It has been conceptualized and performing in a way that integrates the unique characteristics of the Chinese culture. It is simple to understand that the same concept could lead to different understanding and wills of different people in the same culture, so it is not surprising to find out that the one concept could have such differences in practice in another culture. Though, the Chinese practice differs from the original spirit developed in the West, it has never been considered as inappropriate for Chinese or it is well justified and recognized by most ethicists and lawyers and the public (張英濤, 2004). However, developments of the economy and society, rise of human rights and change of the health care insurance system are all challenging the protective health care system. Instead of completely importing the Western informed consent practice, a Chinese informed consent is expecting to be developed. Two important concepts: (1) respect for person to informed consent is the denotology of the health care professionals rather than self protection of informed consent are increasingly; (2) patient should be the one to decide and consent rather than the families, are increasingly being recognized. There is shifting of concept from collective rights to individual right, while the 'whole family-oriented' approach can bridge the gap between the two rights and reasonably apply in the Chinese context.

To supplement, the Chinese health care professionals should be fostered the responsibilities of

respecting individual's right, the meaning of informed consent and the needs of the patients. In the meantime, more studies regarding informed consent should be conducted to identify the needs and difficulties of the health care professionals, patients and patients' families in China so as to assess the evolution process of the informed consent practices. Such findings would be evidently supportive to direct the clinical practice as well as education. Furthermore, it is necessary for the relevant Regulatory Body of China to validate the rules and practices of informed consent in various health care institutions, in order to show special concern to this issue and arise the concern of the society. As the development of the informed consent practices is not the responsibility of either party, but the effort of the society as a whole.

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