



DOI: 10.19187/abc.20174381-83

Ethical Analysis of Husband's Consent to His Wife's Treatment

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The concept of informed consent has its roots in respect for patient's autonomy.¹ Autonomy means self-governance of a person without others interferences. Respect for autonomy is to acknowledge a person's right to make choices and act based on his/her own values and believes.² Everyone has equal right to individual freedom and should be free from others' interference in his/her personal affairs. Every mature and grown-up person has a right to make decision in her best interest and no one is allowed to interfere in her personal affairs, particularly intervention on her body. Respect for patient's autonomy is a part of respect for her human dignity.^{3,4} The professional duty of the physician in this regard is to inform and empower the patients to choose the treatment approach and to obtain consent for any diagnostic or therapeutic intervention on their bodies. Serious attention has been paid to respect for autonomy in the recent century. Before that, physicians had a paternalistic approach toward medical decisions and were less exposed to requests for information by patients. Nowadays, the patients prefer to receive information about their disease, even if it has a poor prognosis, and participate in choosing a treatment method.⁵ The protective role of the families in the treatment process of the patients, especially patients with cancer, is undeniable, but the right to autonomy and the fiduciary duty of the physicians require that the patient's information not be shared with other people without the patient's permission.

In traditional male-dominant societies, some men wish to receive information on their wives' disease, and this request is accepted by some physicians.^{6,7} On the other hand, some women, willingly, leave decision-making to their husbands.^{8,9} In Iran, many

physicians require the husband's consent to gynecologic operations, especially surgery on the reproductive organs.

The physicians do not face any ethical challenges when the wife consents to share information with her husband and the husband agrees to and supports the necessary treatment. However, there may be a problem when a female patient seeks treatment in the absence of her husband or without his company or when the husband disagrees to the treatment.

Unfortunately, the approach of such physicians challenges the receipt delivery of medical care by women. No serious attempts have been made to modify this wrong attitude among physicians.

The present research provides an analysis of this attitude with regard to ethical, legal, and religious considerations.

Magnitude of the Problem

Taking the husband's consent to his wife's treatment has scarcely been discussed in the western ethics and patient rights literature, because it is obvious that a woman, as a mature independent wise person, is free to decide about treatment on her body, and her freedom and rationality should be respected. However, in male-dominant societies, it is necessary to obtain the husband's consent to his wife's treatment for cultural reasons.⁶ Although obtaining the husband's consent to the treatment of his wife is rarely mentioned in national law,¹⁰ it is common as an unwritten rule in many Middle Eastern countries, such as Iran and physicians respect this tradition. Reports of this approach can be observed in countries like Mexico, Pakistan, Nigeria, and Saudi Arabia.^{7-9, 11-13} In Malaysia, the Ministry of Health mandates a husband's consent to the wife's treatment, if the wife is dependent on her spouse.¹⁰ The Iranian law does not require a husband's consent to his wife's treatment. This discriminatory process is an unwritten praxis that is sometimes recommended to clinicians and passed down to the next generations by physicians. Jarayedi *et al.* evaluated the knowledge and performance of the residents of surgery, gynecology, urology, and

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orthopedic surgery regarding a person from whom consent should be obtained according to the law. The highest and lowest prevalence of the believes in sufficiency of the female patient's consent was observed in orthopedic surgery (87.8%) and urology residents (60%), respectively. In practice, 84.4% of general surgery residents obtained a husband's consent to surgery. The rate was the lowest for orthopedic surgery residents (56.1%).¹⁴

Physicians' Professional Commitment and Moral Duty

This issue can be discussed from three ethical standpoints: autonomy, confidentiality, and commitment to improve access to healthcare.

Autonomy: similar to men, women are entitled to independence and human dignity, and medical procedures should only be subjected to their own consent. There is no difference between men and women in terms of human rights and ethical theories. Justice requires that if a certain right is considered for a person in a special situation, it should also be considered for other similar people in the same situation. The right of control over own body is a part of the right to autonomy to which every man and women is entitled. Therefore, a woman's informed consent could be enough for performing medical or surgical procedures on her body.

Confidentiality: it is one of the physicians' professional duties.¹⁵ Any information obtained from the patient during the process of diagnosis or care should be considered confidential and can only be shared with others contingent upon the patient's consent. Physicians should not ignore the female patients' right to confidentiality when their spouses ask for their information, and should find out the patients' wishes in this regard.

Improving Access to Healthcare:¹⁶ some groups of the society do not have an appropriate access to healthcare services due to cultural reasons or social stigmata. From the professional commitment point of view, physicians should try to improve the access of these groups to health services. The physicians and the healthcare system not only should accentuate social stigmata and traditions which result in limiting the access of some people to healthcare services, but also they should try to pave the way for their better access through protecting their health rights.

Religion and Law

Article 158 of the Islamic Penal Code of Iran states that legitimate surgical or medical operations are not considered crime if they are done by the consent of the patient or his/her parents or natural or legal guardians, or legal representatives.¹⁷ Consent should be obtained from the patient's legal guardian when the patient lacks decision-making capacity. In competency and guardianship chapter of Iran's civil

law, these cases are defined as 1) children, 2) mentally incompetent people, and 3) cognitive impaired people.¹⁸ According to the law, women are not considered incompetent and, except for some very limited cases, when the husband's consent is required women are considered independent decision makers (According to Iran's civil law, women need their husband's consent for leaving the country and according to the Islamic jurisprudence, they need their husband's consent for leaving the house and working out of the house). There is no article in law requiring the husband's consent for medical procedures (whether or not affecting fertility).

Since men tend to press charges against physicians more than women, some physician may require the husband's consent to avoid charges. The right to complain is not exclusive to the patient, and the patient family members can press charges against the physician; however, it cannot be concluded that the patient's information should be available to any person who claims to have a right and treatment cannot be contingent upon their approval. It is important that if informed consent be obtained from the patient, the patient's family cannot press charges against the physician regarding medical intervention without their consent; on the other hand, if a medical error has occurred, obtaining consent from the patient does not deprive the patient of her right to make a formal complaint.

There are different opinions in this regard in Islam. The dominate idea of Sunni scholars, including scholars of 4 schools of Sunni jurisprudence, is that the husband is not obliged to pay for the treatment of his wife.¹⁹ In an article, Alhusseini explained the normal procedure in Saudi Arabia necessitates obtaining informed consent from the husband; the author claimed that obtaining the husband's consent is required for operations on sexual organs (including C-section) according to Islam, and if the wife's and the husband's opinions differ, the husband's opinion is preferred.¹¹ This opinion does not exist in the fatāwā of Shia scholars. In his article, Parsapour has presented the opinions of Shia Maraji in this regard.²⁰ Ayatollah Sistani, Ayatollah Shahroudi, Ayatollah Saanei, Ayatollah Golpaygani, and Ayatollah Makarem have stated, in their fatāwā, that there is no necessity for the husband's consent for medical interventions, even if the interventions affect fertility.^{20,21}

Dialogue in the Family and Social Support

A wife and husband have moral duties toward each other. They are both entitled to receive support from each other and are morally obliged to share the information affecting the family. In family-centered societies like Iran, the family members share information and consult with other members of the family before making a decision. However, the ,



husband may not be available when the patient needs receiving care, or the patient may not be willing to share information, regarding her physical problems with her husband due to weak marital relationships. In these circumstances, it is not the physician's duty to share the patient's information with her husband without her permission, or suspend treatment based on the husband's decision. The physician is morally required to persuade the patient to let her family members help her receive proper and integrated care. This issue is even more important in serious diseases like cancer. Nonetheless, it is the patient who determines from whom she seeks help and with whom she wishes to share information. As was mentioned earlier, the physician needs asking the patient with whom she prefers to share the information of her illness, to what extent she is willing to share information, and how she wishes to share information; whether by herself or by the physician.

The tradition of obtaining husband's consent is neither ethical nor legal and based on Islamic jurisprudence. This gender discrimination deprives a group of female patients of their right to access medical care. Unfortunately, many physicians recommend this praxis to their colleague as a rule, and it is, now, a common wrong belief among people. It is the duty of the physicians to modify this misconception in order to uphold medical ethics, support the patients' right to necessary care, pass correct information, and train their assistants and students. Moreover, necessary corrections should be made in hospital policies and procedures to remove this challenge. The health system, as a policy making venue, should clearly state this policy and support the physicians who undertake the process of informed consent correctly.

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