

**Live Webinar on Consent & Forms in the Context of Recent NCDRC
Verdict on 14th August 2020, from 3:00 PM to 5:30 PM IST**

Questions Answered

1. Why are there 15.6 million legal abortions in India?

Unmet need for contraception

2. Why are we pushing contraception on our women & men?

Both need to be educated, empowered to make decisions and have access to care with confidentiality. Never to push it on them either by healthcare providers or family.

3. How are you upholding the Right to Life of the unborn babies in the womb?

Foetal medicine experts are thinking through as to who will defend the unborn

4. Do the parents of aborted babies know what happens to the body parts of their aborted babies?

NO

5. Why has the period of TERMINATION OF BABIES increased to 24 weeks?

Certain lethal and severe morbid conditions are often diagnosed by scan around 22 to 24 weeks.

6. How are you justifying the MTP Act 1971 in this day & age?

Needs discussion and may need amendments - nothing should be written on stone in changing times.

7. As a Forensic Expert I really hope & pray that the killing of innocent babies in their mothers wombs will stop in India, 49 years after the MTP 1971 Act was passed as a measure of Population Control we need to relook the RIGHT TO LIFE Article 21 of the CONSTITUTION OF INDIA.

Agree... we have to bring all stake holders and get moving ahead

8. If an adult does not have the capacity to give consent.. Is it only a legal representative who can give consent Sir?

A surrogate can give consent. This can be spouse/ son/daughter/ parents/brother/sister.

9. We need to revoke the MTP Act 1971. Protect babies from conception. Develop an advocacy for the unborn child.

Let's work towards it

10.How many witnesses required?

As per NABH Standard PRE 4 b at least one witness who shall be a person who was present for the entire duration of the communication between the doctor and patient. One witness from patient's side and one witness from the hospital / doctor's side.

11. Especially in case of tubectomy, IVF, maternal mortality, any amount of exercise of taking consent does not appear to be sufficient. The Doctors and administrators are grilled before medical council, consumer forum and before dho, how can this be streamlined?

Awareness needs to be created amongst all concerned so that the best interest of the patient is properly upheld and that nobody is harassed unnecessarily.

12.Is there any validity period for consent prior to the surgery when taken in advance?

Consent is taken generally taken immediately prior to the procedure.

13.When no one escorts a minor, can he/she give consent? Or to be specific, what are the conditions when a minor can give consent?

Unless, it is a case of emergency, under Indian law a minor cannot consent. In the Western jurisprudence there is a concept called mature minor where in the minor concerned can seek medical services all by himself provided he has a majority. But the said concept is not well developed in India.

14. Model consent forms for possibility of COVID infection in our and hospital admission for other reason they will come, Is it mandatory in these times?

It was discussed. According to one school of thought, it is ideal COVID consent form is signed, for any plausible infection. On the other hand the other school of thought does not mandate such consent form. What ultimately matters is - whether the infection (be it COVID or others) is result of negligence by the hospital in maintaining necessary hygiene. If such hygiene is not maintained or necessary precautions are not taken care, then irrespective of the consent form the hospital can be held liable.

15. IS AHPI planning to challenge National commission decision in Supreme Court?

Yes, AHPI will implede in this case

16. We are not in trade. Therefore the question of unfair trade practice does not apply to medical profession

Well Said.

17. Are Digital Signatures acceptable for consents?

YES. They are acceptable.

18. Is it possible for all hospitals to maintain electronic consent?

Ultimately the Hospital management information system will get digitised.

19. When the consent is taken under audio/ video surveillance in order for the hospital to have a proof that everything was explained in detail, how long should this be saved with the hospital?

The ethical regulations mandate the medical records should be maintained for three years. This would be applicable to audio and video surveillance as well in general. However these are surveillance recordings are not classified as medical records, there is no need to maintain them for such a long period of time.

20. Just signing Blank consent form by patient or his/her relatives allow the treating surgeon to do explorative procedure

This would be case specific.

21. Does the Operative procedure hand written by the surgeon have legal validity as annexure to the consent form?

Yes they are.

22. Does this verdict enforce changes in the consent taken for Dental treatments?

Consent is for the procedure

23. From a hospital perspective, how can a hospital be protected from vicarious liability in case of medical negligence of a doctor?

The question is not sufficient to give any comprehensive answer. However, after Maharaja Agrasen Hospital's case the Hospital can't escape from vicarious liability of medical negligence by consultants.

24. We have seen till date, that the onus of proving any accusation for any medico legal case lies with the medical profession. But, how about a scenario where in this times of pandemic when a declaration is taken from a patient for any symptoms of COVID (in order to take necessary precautions and prevent its spread), he/ she hides facts or lies and thus causing life threatening situation for the complete hospital ?

This would be viewed in light of the epidemic diseases act.

25. Can AHPI help with standard consent language for various standard procedures to be used by remote hospitals?

Needs to be discussed with various specialists.

26. Has national commission gone beyond sameera kohli into montgomery /canterbury? Do we need to move to Canterbury?

As explained/discussed - the National Commission had gone beyond the SC's verdict. There is no need to move to Canterbury right away.

27. Is procedure specific consent mandatory?

Yes

28. Should the pre-printed consent forms be Speciality wise, or a General Consent is sufficient??

Consent forms needs to be speciality wise.

29. can you clarify as to why two witness is needed for every consent and is there any reference for the same (like G.O., judgment etc)

It was explained that one school of thought believes that the consent form contains 'comprehensive contract for medical service' between the doctor and patient. Accordingly they advocate for two independent witnesses. But it is not correct assumption. Consent is only required to treatment of the patient. In that case there is no witnesses are required.

30. If an adult does not have the capacity to give consent.. Is it only a legal representative who can give consent Sir

If the adult is unable to consent (due to lack of capacity) than any one who has his interest in mind can give consent, which might include legal representative as well.

31. Can hospitals have online informed consent medico legally?

Yes the answer is in positive.

32. How to prove that after consenting (after proper explanations to patient/family) id they say I was not told about all these things but they took my sign? in short is there a way for doctors to defend themselves in this regard ?

I must say the answer is very difficult to gift. In doctor-patient relationship, the doctor is always taken to be the dominating party who can influence the choice on behalf of the patient. Therefore even after consenting the patient may go back on his words. On the other hand when the litigations before consumer tribunal, the consumer is treated – favoured litigant therefore he would have upper hand over the doctor.