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On Not Taking “Yes” for an Answer

Alexander M. Capron, *The Journal of Clinical Ethics*¹

This article discusses practices around assessment of capacity in relation to informed consent. The article provides a critical examination of an argument presented in an article by Daniel Brudner and Mark Siegler.² Brudner and Siegler explore what they call the asymmetry in patient capacity assessment, namely the practice of questioning the patient’s decision making capacity primarily in cases where the patient disagrees with the recommended medical intervention.

Background:

Brudner and Siegler dispute that the asymmetry in capacity assessment amounts to paternalism. They provide a nuanced analysis of this asymmetry arguing that it can be ethically justified. They argue that, due to time constraints, it is sometimes ethically justified for the physician to take ‘yes’ for an answer, because the proposed medical intervention is based on what the physician believes is in the patient’s best interest. In cases where patients decline interventions, accepting the patient’s decision without exploring his/her reasons for saying “no” equals a breach of duty to prevent medical harm to the patient.

Main argument

Capron begins by outlining three key steps to informed consent: capacity, disclosure of potential benefits and risks, and voluntary choice. While he condones Brudner and Siegler’s suggestion for action in cases where the patient disagrees with the physician, he raises two concerns about taking “yes’ for an answer without further assessing the patient’s capacity in situations where the patient is agreeable to the proposed medical intervention.

Key points:

- 1) While a patient may agree to a proposed medical intervention, it does not mean that the patient has fully understood what this treatment plan may entail. Exploring the patient’s capacity prior to decision making, rather than as a result of it, is important to ensure that the patient’s expectations of the plan are in alignment with those of the physician. Ensuring that the patient has understood risks of negative

¹ Capron, A. M. (2015). On Not Taking “Yes” for an Answer. *The Journal of Clinical Ethics*, Vol. 26 (2), 104-107.

² Brudner, D. & Siegler, M. (2015). A Justifiable Asymmetry. *The Journal of Clinical Ethics*, Vol. 26 (2), 100-103.

outcomes involved in the treatment also may reduce the likelihood of recriminations afterwards, and prevent the patient feeling as if his or her trust in the physician has been violated.

- 2) Decision-making capacity should be explored in cases of both compliance and non-compliance.

Informed consent should not merely mean providing information to the patient and leaving the decision to him or her. A patient may have good reasons for changing from compliance to refusal or the other way around. Patients' values and behaviors may change with the circumstances, and thus exploring the patient's thinking prior to decision making, rather than as a result of it, is important.

Conclusion

Capron concludes Brudner and Siegler's 'decision tree' is a useful tool that allows for the physician to dig for the roots of disagreement, while respecting patient autonomy, but he also emphasizes the importance of exploring the patient's expectations rather than simply accepting a "yes" answer. This may help the patient and physician to come to a shared decision about treatment which is acceptable to both.