The informed consent in surgery

O consentimento esclarecido em cirurgia

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Through the Department of Professional Defense of The Brazilian college of Surgeons, we have received several requests from models of informed consent forms. The question is worth debating.

The Informed consent represents a major step in strengthening the respect for the autonomy of the person and the relationship between doctor and patient. Seen from this aspect there is nothing to be argued about. The controversy appears when considering how to obtain and register it. A consent obtained bureaucratically, with signature and witnesses, becomes a mere notary figure, loses its prime meaning and can be viewed with suspicion, worsening, rather than improving, the doctor-patient relationship. On the opposite side there is the consent (or refusal) that emerges from a broad and respectful analysis between the two parties.

The issue is complex, especially nowadays when the growing number of legal professionals has led to a real "expertise" in "medical errors" that, in most cases, are not errors or are not medical. In this context, which has allowed the appearance of the so-called "defensive medicine", it seems important to have a document in which the patient reports having been informed about the risks of the procedure which he/she will be submitted to. This is only a partly true vision though. The great defender of the physician before an unexpected result (which does not necessarily mean an error) is not the document, but the patients themselves and their families. That is, the great defense is a good doctor-patient relationship. This good relationship obviously implies extensive conversations between the surgeon and operated to be, in which they will discuss the different types of risks that can range from a simple wound hematoma to severe sepsis. It is very difficult to put all possible unexpected events in a document, and if one manages to do it, the list is so large that frightens the patient, bringing with it an uncertainty that is not a good companion in a surgical procedure. Moreover, the appearance of an unexpected event that was not on the list may be subject to complaint, within the spirit of bureaucracy that permeated the consent, generating a notarial document. It is with this argument that many surgeons have been working with a simplified document or just recorded in the medical chart, in which it clearly states that the patient has been informed regarding the procedure to be carried out and warned of the risks, without details that seek to name all of them. When one does not make a complete list of possible complications it is implied that the goal is merely to guide the patient, giving him/her, without imposition, the opportunity to consent or not the operation. The spirit that permeates these clarifications should be of partnership and shared responsibility with all the respect for the patient's autonomy and the doctor's himself.

Another aspect to be raised is that an informed consent, even if signed in the presence of witnesses, does not represent an argument to justify any type of malpractice, recklessness or negligence. The onset of a complication, even mentioned as a possible explanation in the document, will be analyzed with the existing data and, should there be any fault and causal nexus, the existence of the document will serve only to prevent alleged unawareness of the possibility of the adverse outcome, but will not justify the blame.

It is also important to differentiate consent from the consent form. The first is not necessarily documental, may be only verbal, its record being advised in the medical chart. The informed consent form, on its turn, is mandatorily documental, its use being compulsory in situations such as research involving humans, limb amputations, sterilization, and other specific conditions.

In the future we will present a broad review on the subject, but it should be clear that the consent need not necessarily follow a predetermined format, as each case has unique features and the consent under no circumstances replaces a good doctor-patient relationship.

A consent form cannot be a cold document given to the patient to be signed. It should be a set of clear and objective information, in language that can be understood and to be thoroughly explained to the patient, often in more than one meeting. In addition, it means no safe conduct for errors and oversights. However, when used properly it has been useful in the sense that the patient really knows what he/she will undergo, the risks and potential complications, having, out of respect for his/her autonomy, the right to choose to accept or not what is being proposed.