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Consent and the impact of the Montgomery Case Ruling

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Background

Obtaining valid consent is a fundamental part of every travel health consultation and one every travel health professional will be familiar with. A recent high court ruling has raised issues for every health-care professional to consider, regardless of area of practice.

Nadine Montgomery gave birth to her child in 1999. She had diabetes, and it is known that women with diabetes are more likely to have bigger babies. This can pose a risk of around 10% of shoulder dystocia during a vaginal birth. Despite having raised concerns about a normal birth, the patient was not informed of the possibility of shoulder dystocia as her doctor thought the risk was small. During the birth her son suffered shoulder dystocia causing him to be deprived of oxygen for 12 minutes. As a result of the oxygen deprivation the baby suffered significant disabilities.

Montgomery took her case through the Scottish courts but did not win and subsequently the case was taken to the Supreme Court, Montgomery vs Lanarkshire Healthboard[1].The consequential injuries, which included cerebral palsy, to her son could have been avoided if the woman had known that a caesarean section was a reasonable alternative given her condition. The attending obstetrician made the decision not to discuss the risk of shoulder dystocia or alternative birth options with the patient, because in her medical opinion it was not in the patient's interest to have a caesarean section. The crux of the legal case was that the patient was unaware of the risk of shoulder dystocia or the option to have a caesarean section. She consented to having a vaginal birth based on the information she had, which was incomplete. The woman was awarded a substantial payout as the result of the doctor's negligence in failure to make her aware of possible risks of her procedure and suitable alternatives.

Impact of this Court Ruling

The Court ruled that there will be legal obligations on all healthcare professionals to ensure their patients are made aware of material risks associated with their proposed treatment and what suitable alternatives, if any, are available. Material risk is defined as what a reasonable person would want to know. It is not for the clinician to dictate what information and how much information should be shared, and make decisions for the client.

There has been a shift away from paternalistic doctor-led consultations in favour of patient-centred care where patients take an active role in decisions about their care and treatment. This model of care is dependent on patients making informed decisions about their treatment. A recommendation from the court is that the doctor has an advisory role to provide the patient with information, risks and reasonable alternatives that they can understand, and not to bombard them with technical information.

Adapting the Ruling to different Healthcare Settings

The implications from the Montgomery case will affect all healthcare practitioners. Sokol[2] proposed questions that healthcare providers should reflect on when engaging in a consultation:

- What are the material risks involved in the treatment/ care/ medicine I am recommending?
- Have I made the patient aware of the material risks?
- Have I advised the patient about any alternative to the course of treatment/care/medicine?
- Am I certain the patient understands the information and can come to a decision?
- Have I documented what has been discussed with the patient?

Gaining Consent in Travel Consultations

To give consent means the client has considered the benefits of a treatment or procedure versus the risks associated with it. The outcome of the Montgomery case can be used by healthcare professionals to improve the quality of pre-travel consultations with clients, which will subsequently improve the quality of the consent that is obtained. For clients to be able to make informed choices and thus give informed consent they are reliant on their healthcare professional providing them with the benefits and possible risks associated with their treatment. Professional regulators, including the GMC,[3] NMC[4] and GPhC[5], provide guidance on obtaining consent and the need for the patient to be presented with a balanced view of a treatment or medicine. It is important to remember clients' attitude to risk will vary and may well be different to the practitioner's. Clients also have the right to refuse treatment or care, and travel health professionals should ensure they understand the implications of their decision. Clients should not accept treatment because the healthcare professional thinks they should; it should be as the result of a partnership of understanding in managing their health or condition. The client has the right to make their own decisions based on the knowledge

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imparted to them and underpinned by their beliefs and values.

Theory to Practice

Travel medicine is provided by a range of healthcare professionals in diverse clinical settings. The requirements set following this landmark case apply to all healthcare professionals in all disciplines and extends further than ticking a box to say that the client gave consent. The GMC's guidance on Consent[3] suggests doing "your best to understand the patient's views and preferences" and recommends giving the client "time to reflect" before they make their decision, especially in complex situations.

Consider these Questions when Carrying out a Consultation

- Have I understood what the patient's preferences are?
- Have I allowed the patient to read the manufacturer's Patient Information Leaflet of the medicine or vaccine or have I highlighted a selection of a few common side effects?
- Have I enquired about any important engagements happening in the next few days where it may be difficult to manage side effects of a live vaccine? Have I balanced this against time issues if discussing yellow fever certificate validity?
- When offering options of antimalarials, how would I present the traveller with a comparison of side effects to help them make their own decision?
- Have I explained the consequences of the decision if the patient declined vaccinations or medicines such as antimalarials?
- Have I checked whether the patient has any questions or needs anything clarified?

Conclusion

Barnett and Sokol[6] have recognised that the consequences from the Montgomery ruling and the changes to the law concerning obtaining informed consent are "now rippling across other healthcare professions". They also acknowledge that these changes in the law have not yet been reflected in the guidance documents of regulatory bodies. Healthcare professionals must take cognisance of the ruling and ensure they address the matters raised to gain good quality informed consent.

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