Briefing Document: Informed Consent in Medical Practice

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Overview:

This briefing document summarises the main themes and important ideas discussed in the provided transcripts concerning informed consent in medical practice. The sources feature perspectives from surgeons, risk pool managers, legal professionals, patient advocates, and content developers for patient information resources.

Key Themes and Important Ideas:

1. The Evolving Legal Landscape and the Primacy of "Meaningful Dialogue":

- **Shift from Paternalism to Patient Autonomy:** The discussion highlights a significant shift in the legal understanding of consent, moving away from the "doctor knows best" approach (Bolam test) towards prioritising patient autonomy, particularly influenced by the landmark **Montgomery v Lanarkshire Health Board** case.
- As Simon Parsons notes, the GMC guidance emphasises "that meaningful dialogue and the exchange of relevant information specific to the individual patient."
- Amelia Newbold explains that *Montgomery* established a test of "material risk," which involves both "What risks would a reasonable person in the patient's position be likely to attach significance to?" and "what risks should a clinician reasonably be aware that an individual patient would be likely to attach significance to?"
- **The Importance of Understanding "What Matters to the Patient":** The GMC guidance, as highlighted by Simon Parsons, explicitly states that "doctors must try to find out what matters to the patient." This is a direct consequence of the *Montgomery* ruling.
- Ben Thomas underscores the need for an "individualised assessment" because "every patient is different."
- Francis Brooks echoes this, stating that "the GMC talk about is trying to establish what material risks are for that patient and in the simple act of asking that patient what they want to know."

- **Legal Consequences of Inadequate Consent:** Failure to obtain informed consent can lead to legal repercussions.
- Simon Parsons warns that if clinicians don't fulfil their obligations regarding information provision, "there is a chance that you will end up in court as a result. And that's something we all want to avoid."
- Jonathan Webb highlights the significant financial cost of claims related to lack of informed consent in Wales, noting an increase from an average of £28 million before 2015 to around £78 million.

2. The Consent Process as an Ongoing Dialogue, Not Just a Form:

- **Beyond the "Yellow Form":** Ben Thomas criticises the tendency for clinicians to equate consent with "a yellow form," emphasising that "actually it's about decision-making."
- **Shared Decision-Making:** The importance of shared decision-making is repeatedly stressed as the cornerstone of good consent.
- Simon Parsons advocates for spending time "asking the questions, finding out what's important to the patients, finding out, you know, what hobbies they have and what profession they're in, and the risks they're prepared to take so that I can tailor my information for them."
- Tim Johnson draws parallels with financial services, highlighting the importance of understanding the "demands and needs of that particular client and playing them back to those customers."
- **Checking Patient Understanding:** Clinicians must actively ensure patients understand the information provided.
- Amelia Newbold stresses the importance of "checking the patient's understanding. Have they have they actually understood, not assuming a level of understanding?"
- The case of *Mordel v Royal Berkshire NHS Foundation Trust* illustrates that even seemingly fluent patients in a second language may not fully comprehend medical information.

3. The Role of Information Resources and Accessibility:

- **EIDO as a Standardised Resource:** EIDO leaflets are presented as a "gold standard information sharing for procedures" (Jonathan Webb) and are widely used across Wales.

- Simon Parsons describes how using EIDO information provided in advance facilitates the consent process, allowing him to "just confirm consent on the day of surgery."
- **The Need for Accessible Formats:** Patient advocates highlight the crucial need for information to be accessible to everyone, considering factors like language and visual impairments.
- Jonathan Webb points out that EIDO leaflets are available in Welsh, and research shows patients prefer to be consented in their language of choice.
- Helena Durham, a patient with a visual impairment, recounts her consistent difficulties in receiving information in a readable format, highlighting the limitations of standard printed leaflets and inaccessible digital formats. She notes, "I've never been given any information in a format I can read."
- **Leveraging Digital Solutions:** The potential of digital platforms, like the NHS App, to provide information in accessible and customisable formats is acknowledged.
- Sophie Randall notes the advantages of digital information, allowing patients to "choose how they consume that data," including using screen readers and changing font sizes.

4. Practical Challenges and Considerations in the Consent Process:

- **Delegated Consent:** The GMC permits delegated consent to trained trainees who have the necessary information and support from consultants.
- Simon Parsons emphasises that trainees must be "trained properly," have "written information to support what they're saying," and know when to seek support from senior colleagues.
- **Consent on the Day of Procedure:** Clinicians must be mindful that a patient's condition or understanding may have changed since initial discussions, especially with long waiting lists.
- Simon Parsons states, "we also have to be aware that when they come for their operation, if they've been on a waiting list for a long time, their condition might have changed."
- Charles Ranaboldo raises the scenario of a patient on the day of surgery having not read or understood the provided information. Amelia Newbold advises that if there are concerns about the patient's understanding, the procedure should not proceed.

- **Documenting the Consent Process:** Thorough and accurate record-keeping is essential for medico-legal protection.
- Simon Parsons advises trainees to "refer to the information that you've given on the consent form" and to document having shared information in clinic letters.
- Jo Clift stresses that "if you don't write it down, it doesn't matter. So record keeping is just so important." The adage "no notes, no defence" is highlighted.
- **Consent for Trainees and New Techniques:** Consenting patients when trainees are involved or when using new techniques requires careful consideration of competence and supervision.
- Martin, a vascular surgery registrar, raises the difficulty of consenting when the extent of his involvement in a procedure is uncertain.
- Bryoney Lovett describes her practice of only allowing trainees to perform procedures they are "signed off at level four," the expected level for a new consultant.
- Simon Parsons emphasises the importance of consultants being "proctored by experts" when adopting new techniques and including this in the consent process.
- **The "Cooling Off" Period:** The concept of a cooling-off period, particularly in elective procedures, is discussed as a way to allow patients time for reflection. However, its applicability in time-sensitive situations like cancer diagnoses is questioned. Jo Clift suggests a minimum of 14 days for cosmetic surgery.

5. Patient Experience and Perceptions of the Consent Process:

- **Consent Seen as Protecting the Surgeon:** Helena Durham's research with patients revealed a common perception that the consent process primarily serves to protect the surgeon from litigation, rather than being a genuine process for the patient's benefit. She notes, "Nobody saw it as being really a process for them."
- **The Anxiety of Waiting:** The period between consenting to a procedure and the actual surgery can be a source of significant anxiety for patients. Helena Durham points out that "we've sort of feel we've signed up to the procedure, but also to a lot more than that."
- **Balancing Thoroughness with Waiting Times:** There is a tension between the need for a thorough consent process and the pressures to reduce waiting lists and expedite treatment. Helena Durham acknowledges this but ultimately implies that the quality of the decision-making process is paramount.

6. "Red Flags" in Patient Profiles (Underwriter Perspective):

- Jo Clift, from an underwriting perspective, identifies certain patient characteristics that might indicate a higher risk of dissatisfaction or litigation. These include "serial patients," "secretive patients," and "unrealistic patients."
- She emphasizes the importance of "bedside manner" and emotional intelligence in building rapport with patients, which can lead to better information sharing and a more informed consent process.

Conclusion:

The presented sources collectively underscore the critical importance of informed consent as a dynamic, patient-centred process grounded in law and ethics. The focus has shifted significantly towards ensuring patients are genuinely informed, understand their options and the associated risks (tailored to their individual circumstances and values), and actively participate in decision-making. While standardised information resources like EIDO leaflets play a valuable role, they are not a substitute for meaningful dialogue and accessible communication. Clinicians face ongoing challenges in balancing the legal and ethical obligations of consent with practical constraints, but prioritising patient understanding and documenting the process thoroughly remains paramount to providing high-quality care and mitigating legal risks.