Briefing Document: Themes and Important Ideas in Consent Discussions

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Overview:

This briefing document summarises the main themes and important ideas discussed across the provided transcripts concerning the process of obtaining informed consent from patients in the healthcare setting. Key discussion points revolve around the evolving legal landscape (particularly the impact of the Montgomery ruling), the practical challenges of achieving meaningful dialogue and shared decision-making, the role of information resources like EIDO leaflets, and the importance of documentation and ongoing training.

1. The Evolution of Consent: From Paternalism to Patient Autonomy

A central theme is the significant shift in the legal and ethical understanding of consent, moving away from a doctor-centric approach towards prioritising patient autonomy.

- **Historical Context:** Dr. Amelia Newbold and Jonathan Fuggle highlight the historical "doctor knows best" approach, referencing the *Bolam* test where acting in accordance with a responsible body of medical professionals was sufficient. However, they emphasise that this has evolved.
- **The Montgomery Impact:** The landmark *Montgomery v Lanarkshire Health Board* case is repeatedly referenced as a pivotal moment. Simon Parsons notes that GMC guidance now explicitly states that "doctors must try to find out what matters to the patient," directly resulting from this case.
- **Material Risks:** Newbold and Fuggle explain the *Montgomery* test of "material risks," which involves both:
- **Objective Assessment:** "What risks would a reasonable person in the patient's position be likely to attach significance to?"
- **Subjective Assessment:** "what risks should a clinician reasonably be aware that an individual patient would be likely to attach significance to?" This necessitates a "dialogue point" to understand what matters to the individual. Bryony Lovett echoes this, stating, "the most important thing about Montgomery is the shift in focus of consent towards the specific needs of your patient."
- **Beyond Tick Boxes:** Several speakers critique the limitations of consent forms as the sole indicator of valid consent. Dr. Ben Thomas argues that many

clinicians "equate consent with a yellow form... whereas actually it's about decision-making." He points out that audits often rely on "consent form audits as a surrogate marker" without evidence of the preceding dialogue. Francis Brooks and Jo Clift also mention a case in Australia where a basic "tick box exercise" consent template was insufficient.

2. Achieving Meaningful Dialogue and Shared Decision-Making

The transcripts underscore the difficulty and importance of fostering a genuine, two-way conversation with patients to facilitate informed decisions.

- **GMC Guidance:** Simon Parsons highlights the GMC guidance emphasizing "meaningful dialogue and the exchange of relevant information specific to the individual patient." Principle three states patients have the "right to be listened to and to be given information that they need to make a decision and the time and support that they need to understand it."
- **Individualised Assessment:** Ben Thomas stresses that consent is an "individualised assessment" because "every patient is different." He notes the dynamic nature of decision-making, especially with waiting lists where "circumstances change."
- **Patient Perspective:** Helena Durham provides a powerful patient perspective, noting that many patients perceive the consent process as being "for the surgeon so that I don't sue them" rather than a process truly for them. She highlights the "missing link of the shared decision-making."
- **Understanding, Not Just Information:** Amelia Newbold emphasises the need to go beyond simply providing information to "checking the patient's understanding." She stresses, "Have they have they actually understood, not assuming a level of understanding?"
- **Language and Format:** The importance of clear, understandable language, avoiding medical jargon, is raised by Newbold. Helena Durham's experience highlights the crucial need for information to be provided in accessible formats (e.g., larger print). Jonathan Webb mentions the Welsh Risk Pool's provision of EIDO leaflets in Welsh, acknowledging the desire for consent in the "language of choice." Tim Johnson from the financial services sector draws a parallel, emphasising the need to explain complex concepts simply for informed decisions.

3. The Role of Information Resources and Technology (EIDO)

EIDO information leaflets are frequently mentioned as a valuable tool in the consent process.

- **Gold Standard:** Jonathan Webb states that the Welsh Risk Pool has supported EIDO leaflets for 15 years, considering them the "gold standard information sharing for procedures."
- **Efficiency:** Simon Parsons highlights how using EIDO leaflets allows for confirmation of consent on the day of surgery, making the process "so much easier."
- **Content Development:** Julie Smith from EIDO describes the collaborative process of creating leaflets with clinicians and patient information experts, including translations and easy-read versions. Omar Mulla, an ENT surgeon, details his process of reviewing and even showing draft leaflets to patients for feedback.
- **Documentation:** Simon Parsons stresses the importance of referring to the information given (e.g., EIDO document) on the consent form and in clinic letters as "medico-legal evidence." Amelia Newbold reinforces this: "If you are giving out patient information leaflets, document it, so that it's very clear." A case example was mentioned where documenting the provision of EIDO leaflets via a tick box proved useful in a legal case.
- **E-Consent:** Bryony Lovett describes her trust's implementation of electronic consent using their "Nova" system, integrating with EIDO. This allows patients to review information, discuss it, and confirm consent electronically prior to surgery.

4. Practical Challenges and Considerations

The transcripts also address various practical challenges and important considerations in the consent process.

- **Delegated Consent:** Simon Parsons acknowledges that trainees often carry out consent and highlights that the GMC allows this if the trainee is trained and acts within their competency, seeking help when needed. Bryony Lovett advises only delegating consent to someone who can perform the procedure and emphasises the need to train junior colleagues by involving them in the consent process.
- **Waiting Lists and Changing Conditions:** Simon Parsons points out that patients on long waiting lists may have changes in their condition, necessitating a re-evaluation of the decision-making process on the day of surgery.
- **Competency and New Techniques:** The issue of trainees consenting for procedures they may only perform part of is raised. Bryony Lovett states she only allows trainees to perform procedures they've been "signed off" for. Simon Parsons emphasizes the importance of proctoring for consultants learning new techniques and including this in the consent process.

- **Patient Understanding on the Day:** Charles Ranaboldo raises the common scenario where patients haven't read or understood the provided information on the day of surgery. Amelia Newbold advises against proceeding if there are concerns about the patient's understanding, even if information was previously provided.
- **Patient Preferences for Information:** Helena Durham's experiences highlight the need to consider patient preferences for the format of information. Ben Thomas acknowledges that their audit doesn't currently focus on this.
- **Time Pressures:** Ben Thomas raises the tension between having a good conversation about consent and the pressure to reduce waiting lists. Helena Durham acknowledges this challenge.
- **Documentation and Record Keeping:** The crucial role of good medical record keeping is repeatedly stressed. Simon Parsons advises trainees to refer to the information given in their notes. Francis Brooks and Jo Clift state, "no notes, no defence. Poor notes, poor defence." Bryony Lovett highlights the importance of documenting the "whole process of consent."
- **Emotional Intelligence and Bedside Manner:** Francis Brooks and Jo Clift emphasise the importance of "getting to know your patients" and having a "sympathetic, empathetic bedside manner," as patients are less likely to sue doctors they like and will be more forthcoming with important information.
- **Learning from Mistakes:** Francis Brooks and Jo Clift mention that regulators (like the GMC) are keen to see evidence that clinicians are learning from mistakes and changing their practice.
- **Cooling-Off Periods:** The concept of a cooling-off period, particularly for cosmetic surgery, is briefly discussed, with a suggestion of 14 days. However, the applicability to time-sensitive conditions like cancer treatment is questioned.
- **MDT Discussions:** Helena Durham raises the question of patient involvement in MDT (Multi-Disciplinary Team) discussions and whether patients should be presented with a range of options rather than a "fait-accompli." Bryony Lovett clarifies that the MDT recommendation is to "facilitate the consultant discussion with the patient," not a final decision.

5. BRAN Framework

Bryony Lovett specifically mentions the BRAN framework (Benefits, Risks, Alternatives, including doing Nothing) as a crucial tool for surgeons in the consent process, aiding both clinician recall and patient understanding.

Conclusion:

The transcripts collectively paint a picture of a complex and evolving landscape of informed consent. The legal precedent set by *Montgomery* has fundamentally shifted the focus towards patient-specific, meaningful dialogue and shared decision-making. While resources like EIDO leaflets and technological advancements like e-consent offer valuable support, the core of good consent remains effective communication, understanding the individual patient's needs and concerns, and thorough documentation of the entire process. Ongoing training and a commitment to learning from experience are essential for navigating the practical and ethical challenges of obtaining valid and informed consent.