Informed Consent Forms: Who are they for?

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for The San Francisco Psychologist

When I talk to colleagues about legal and ethical issues, or teach workshops, probably no topic provokes more irritation than informed consent. Many psychologists feel coerced into incorporating a lengthy, obscure, legalistic form into their intake processes, which, in other respects, are carefully designed to be individualized, responsive, and conducive to the treatment on which they are embarking. They feel they are given no choice about this part of the intake, that professional judgment has been trumped by an ill-explained imperative.

I sympathize with these reactions, and I believe there are good grounds on which to take issue with the conventional wisdom in this domain. First, though, it must be acknowledged that the principle of informed consent is well established for psychologists. Legal and ethical sources, binding for psychologists, agree that clients must receive enough information to permit informed choices about whether to accept the services we offer. These authorities also effectively require us to make every effort to insure that clients are free from coercion (Fridhandler, et al., 2004). The principle of autonomous choice is one we must honor and promote in the opening phase of our work.

But is this what the forms are about? Are they designed with the primary goal of helping clients make free and informed choices? Some of their language makes one skeptical. The APAIT form (APAIT, 2004) is the most pertinent, because it is widely known, recommended by one of the primary insurance providers for psychologists and, not least, because it is probably the best of its kind. Among its virtues are a plain-language discussion of the nature of psychotherapy, a clear presentation of the psychologist's fees and other business practices, and an invitation to the psychologist to modify the document to conform to his or her own practice and professional judgment. The language and tone are direct and respectful.

And yet, the nature of the document is perplexing. At first glance, it appears to be a tool to enhance the informed consent process. It is called "Sample Informed Consent Contract,"[1] the introduction states, "most commentators suggest that full informed consent is both ethically necessary and a good risk management strategy," and the discussion about potential risks and benefits seems to place it squarely within the domain of informed consent.

However, there is the anomalous word, "contract." One is also told that the document "allows the psychologist to establish a legally enforceable business relationship with the patient." The patient, by the same token, is presented with a document boldly titled "Outpatient Services Contract" and is informed, "When you sign this document, it will represent an agreement between us." He or she is then told of various fees (for report writing, telephone calls, authorized meetings with other professionals) and instructed that payments are due within 60 days and that the psychologist has the option of collection agencies and small claims court if fees remain unpaid.

What is going on here? Actually, APAIT is explicit: "This draft psychotherapist-patient contract has been prepared for two reasons," namely, informed consent *and* the establishment of

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[1] Actually, the APAIT website refers to it by this title but also by the more generic "Sample Psychotherapist-Patient Contract."

the business relationship. The drafters, and their advisors, have seen fit to kill two birds with one stone. The consequence is that psychologists and their patients are left with a document, and a strategy, that completely blurs the distinction between helping the patient make a free choice about services and obtaining his or her signed agreement to a laundry list of contractual obligations.

Where does that leave informed consent, per se? In a fuller discussion, one could analyze the risk management considerations intrinsic to informed consent and weigh those against the clinical costs of a legalistic introduction to psychotherapy. For the moment, let me simply describe my own approach. I provide my patients with basic, written information about my practice and about the limits of confidentiality, because I believe that written materials are sometimes easier to comprehend than an oral presentation delivered at a time that the patient's attention is generally focused on the initiation of the treatment relationship.[2] I ask for no signatures, but I record, in my notes, the fact that I have provided the information. From there, in essence, my handling of informed consent consists of paying attention. That is, I look for opportunities to help the patient understand the process of his or her own therapy and to get past the inner and outer obstacles to autonomous decision-making. Thus, the boundary between informed consent and therapy itself grows deliberately indistinct.

Granted, this approach relies more on my clinical judgment and conscientiousness than does an approach based on a conventional form. And granted, too, this approach is probably riskier; I have no trouble imagining a plaintiff's attorney mockingly saying to me, under oath, "…and where is this approach presented in the professional literature…ah, in other words, you made it up yourself?" But despite these concerns, this is the approach that makes the most sense to me.

References

APAIT. (2004). Sample Informed Consent Contract. Downloaded 7/22/2007 from www.apait.org/resources/riskmanagement/inf.asp. (The document appears largely unchanged since 1999.)

Fridhandler, B. & 2004 Expertise Series Task Force. (2004). Informed consent. (Contained in The Expertise Series, provided to members of CPA Division I, and available soon to all CPA members at cost.)

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[2] The Expertise Series document puts it this way: " Informed consent forms and notices may facilitate this process and the psychologist may *choose* to use them." (Emphasis added.)