British Society of Interventional Radiology
Registered Charity No: 1084852

Obtaining informed consent after the Montgomery ruling – BSIR statement

Background

The ruling from the Montgomery *v* Lanakshire case in March 2015 has significant implications for UK doctors obtaining informed consent from patients. Nadine Montgomery's son had a complicated vaginal delivery due to shoulder dystocia, with subsequent hypoxic injury and cerebral palsy. Ms Montgomery was of small stature and a diabetic. She sued for negligence, arguing that if she had known of the increased risk, she would have opted for a caesarean section. The Supreme Court ruled in her favour, stating that "the test of materiality is whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would be likely to attach significance to it."

The Royal College of Surgeons of England (RCSE) has published updated guidelines for obtaining consent from patients following this ruling. Other organisations such as the Royal College of Radiologists and the General Medical Council (GMC) are yet to do so.

Implications for doctors

This ruling marks a shift from the previous "Bolam test", where the doctor's practice was judged on the basis of whether it would be upheld by a responsible body of medical opinion. The Bolam test continues to apply for other allegations of negligence, but no longer applies to obtaining consent. For consent purposes, the new legal standard is that doctors must now ensure that patients are aware of any "material risks" involved in a proposed treatment, and of reasonable alternatives.

The GMC had already advocated this approach for consent in its 2008 guidance.

Reccomendation

The BSIR recommends adhering to the following key principles when obtaining informed consent, as documented in the updated RCSE guidelines, to enable practitioners to meet the standards for consent set out by the Montgomery ruling and the GMC:

- The discussion has to be tailored to the individual patient. This requires time to get to know the patient well enough to understand their views and values

- All reasonable treatment options, along with their implications, should be explained to the patient

- Material risks for each option should be discussed with the patient. The test of materiality is twofold: *whether, in the circumstances of the particular case, a reasonable*

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person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would likely attach significance to it

- Consent should be written and recorded. If the patient has made a decision, the consent form should be signed at the end of the discussion. The signed form is part of the evidence that the discussion has taken place, but provides no meaningful information about the quality of the discussion

- In addition to the consent form, a record of the discussion (including contemporaneous documentation of the key points of the discussion, hard copies or web links of any further information provided to the patient, and the patient's decision) should be included in the patient's case notes. This is important even if the patient chooses not to undergo treatment

References:

1. Montgomery v Lanarkshire Health Board [2015] SC 11 [2015] 1 AC 1430
2. Bolam v Friern Hospital Management Committee [1957] 1 WLR 582.
3. https://www.rcseng.ac.uk/library-and-publications/college-publications/docs/consent-good-practice-guide/
4. **http://www.medicalprotection.org/uk/for-members/news/news/2015/03/20/new-judgment-on-patient-consent**
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6. **https://www.rcog.org.uk/globalassets/documents/news/membership-news/og-magazine/december-2016/montgomery.pdf**
7. **https://www.gmc-uk.org/guidance/ethical_guidance/consent_guidance_contents.asp**

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