Informed consent in psychiatric nursing
—Focusing on the assessment of patient's competency—

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Abstract

From the view point of Bioethics, medical and health care staff must properly treat and care for patients with their consent. However, prior to getting the patient's consent, it needs to be established if the patient is competent or not.

In the case of psychiatric patients, how does one judge the patient's competency ? In some cases informed consent should be obtained also from the psychiatric patients themselves. In those cases it is essential how to judge the competency level. This is the focus of my research. One recommendation is to use a Sliding-Scale Model by J.F.Drane. Drane set three standards criteria for determining competency. Each level being more stringent than the next. Standard 1 is the least stringent criteria for granting competency. Here, the measure of competency is if the patients are aware and can assent. Standard 2 is more stringent than standard 1. In this case it is a little more difficult to grant competency. In this criteria the measure of competency is if the patients have understanding and the ability to choose. Standard 3 is the most stringent of criteria, making it the most difficult to grant competency. The measure of competency is if the patients have ability of appreciation and rational decision.

It seems possible for psychiatric patients to have competency for decision-making, especially in some cases of standard 1 and standard 2. In this article, with specific examples of these criterias, the level of patient's competency for decision-making is considered from the view point of psychiatric nursing.

Key words

informed consent, psychiatric nursing, respect for autonomy, competency assessment, sliding -scale model

1. Introduction

The necessity to obtain a patient's informed consent has been emphasized in various medical situations. Behind the emphasis on the concept of informed consent in Japan, a problem that a patient's autonomy has hardly been respected in medical care exists. Especially in the field of nursing, in most cases, care has been given without obtaining patients' definite consents to the care. Actual harm done by nursing without obtaining patient's consent may not be so conspicuous as that done by medical treatment. However, in view of respect for the patient's autonomy, this is not an ethically right practice. This tendency seems to be more conspicuous in psychiatric nursing. In this field, standing on the premise that psychiatric patients don't have competency to make a decision, health care workers have been engaging in the practice without having any thought of informed consent from the beginning. In Japan, surprisingly terrible human right abuse cases at psychiatric wards, not only in nursing but also in medical treatment, were reported. Even if a patient has a mental disorder, it cannot be justified that medical treatment or nursing care is given arbitrarily without any consideration for the patient's will. However, when it comes to respect for psychiatric patient's autonomy, a complicated problem arises. How can decision-making with respect to human right be available for psychiatric patients ? Is it really impossible to obtain informed consent in psychiatric nursing ? By focusing on these questions, the possibility of informed consent in psychiatric nursing is considered in this article.

2. Necessity and problems of informed consent in psychiatric nursing

Among various issues in ethics, the issue regarding decision-making is always positioned at the center. The two main points examined in this issue are who makes a decision and whether a decision is made based on one's free will. Among the well-known four principles of Bioethics stated by T. L. Beauchamp and J.F. Childress, principle of autonomy has priority over the other three principles[1]. This principle is valued the most because it is concerned with decision making. Principle of autonomy implies that every human being has a right to control or decide his own personal matters by himself or herself. It is needless to say that the concept of informed consent is a rule for decision-making originating in this principle.

While the principle of autonomy has been valued in bioethics in the western world, it is true that some Japanese scholars take objection to this principle, claiming that this principle does not match Japanese mentality. However, in Japan, the process of decision-making is often blurred, which makes unclear where the responsibility lies. In addition, many problems stem from lack of respect for the individual's will. In such a society, I think that, at least, thorough implementation of this principle is very vital, and psychiatric patients' care is not an exception. That is, informed consent should be obtained also from psychiatric patients.

When obtaining a patient's informed consent, also in psychiatric nursing, nursing staff must give the patient an explanation about the proposed care such as its purpose, benefit, risk, method, cost and time. However, in the explanation to psychiatric patient, what the nursing staff should be careful to do is to lay an emphasis on the point that medical and health care staff will never give up on the

patient even if the patient won't give his or her consent to the care. This is commonly necessary in obtaining any patient's informed consent, but, in particular, with psychiatric patients, much attention should be paid to this point. Many psychiatric patients are constantly in frightened state because of their weak egos. They are always suffering from fear of being attacked by others. For this reason, it is very important to make them feel safe by explaining this point. When a patient's consent to proposed care cannot be obtained, it may be a good idea to discuss alternatives with the patient, which may enable the patient to express his or her will without much worry.

In addition, much attention should be paid not to put pressure on psychiatric patients when the explanation is given. This is again commonly necessary in the explanation to all patients, however, in particular, to patients with weak ego, much attention should be paid to this point. With a little push, they might follow other people's suggestion easily. This is not considered as "voluntary consent." In other words, health care workers are required strictly to follow the basic procedure required in obtaining informed consent in general.

However, no matter how hard they may try, health care workers cannot avoid facing a peculiarly difficult problem in obtaining informed consent in psychiatric nursing. To recognize a patient's decision as a decision made by the patient's free will, the patient is required to have competency for decision-making. What should be questioned here is whether psychiatric patients have such competency. In general, they have been regarded as incompetent in the society. However, conditions of patients differ from one person to another. So, it is inappropriate to dismiss them as a group of "incompetent," which this society has been doing so far. At the same time, it is also true that some patients are in the condition impossible to be evaluated as "competent." The term "competency for decision-making" used here implies an individual's capacity as a result of collective evaluation of the cognitive ability, the ability to cope with reality, the ability to understand relevant information, the ability to make a decision, and emotional stability. How many of these elements do psychiatric patients have ? When it comes to the issue of informed consent in psychiatric nursing, it is very important to consider this point.

In Japan, this type of assessment of competency for decision-making has hardly been conducted. In general, to obtain informed consent properly, this assessment should be required. In particular, in case of a psychiatric patient whose competency for decision-making might be impaired, this assessment is an essential requirement in obtaining the patient's informed consent. By conducting this assessment, the door might open to obtain informed consents of those who have been dismissed collectively as incompetent. When this door opens, psychiatric nursing or medical care will be able to become more ethical with a more human touch.

Then, how should be this assessment conducted ? The article written in the U.S. is useful as a reference for discussion of this point.

3. How to evaluate patient's competency for decision-making

In her writing, "The many faces of competency," J.F. Drane has used the sliding-scale model for assessment and proposed a very interesting suggestion. According to her suggestion, the difficulty of what to be consented or decided has much influence on the result of the assessment of the patient's competency for decision making. Based on this idea, she

has specified three standards of competency, starting with less stringent case. Here, it is available to consider this issue more concretely, examining these standards one by one.

(1) Standard 1

Drane has specified standard 1 as cases in which matters to be decided by a patient are relatively easy. At this level, elements in assessment of competency are capacity for awareness and assent. The former meets the cognitive requirement of informed consent, and the latter meets the decisive requirement of informed consent. Drane cites the following as an example to explain this standard.

Betty was a 25-year-old secretary and lived alone. One day, she was involved in a traffic accident. When she was taken to hospital, she was in state of mild disturbance of consciousness as well as in mild state of shock. At this moment, she could understand what were told mostly, but she has a difficulty in her conversation. Prior to performing blood transfusion and bone-setting, the doctors asked for her consent and she gave her consent to the treatment by a nod. It was easy to tell that this treatment was in the patient's best interest because this treatment was very effective and has little risk. For this reason, even with mild disturbance of consciousness, her consent was regarded as valid[2].

In this case, Betty should be assessed as competent to make a decision on the treatment that asked for her consent. This is Drane's view. Thus, Standard 1 is applied to the easiest cases to decide. At this level, children who are at the age of ten or older, as well as the mild senile dementia, the retarded educable, and the intoxicated are regarded as competent. Therefore, in the cases to which standard 1 is applicable, it is thought to be possible to obtain direct informed consent from those people mentioned above.

How could be standard 1 considered in psychiatric nursing ? When the care is clear enough for anyone to understand and the patient's benefit of receiving the care exceeds that of not receiving the care, those who fall into the category mentioned above and schizophrenia patients in stable condition should be assessed as competent to give their informed consent directly. For example, prior to giving nursing care such as recreation care, which soothes a patient's heart and restores his or her damaged relationships with others, it is desirable to obtain informed consent directly from a patient. If the patient refuses the care, nursing staff should think about another acceptable option with him or her. Or, there may be a case like following: A patient is suffering from stomatitis. From nursing viewpoint, frequent gargling is necessary. It is clear that frequent gargling eases the patient's condition in shorter time. Once the condition is eased, the patient will be able to eat. In this case, gargling is 100% in the patient's interest. So, standard 1 is applicable to this case. Therefore, as for those who fall into the group mentioned above, it is desirable to obtain their informed consent first, and then, have them gargle.

However, as for child patients, it is also necessary to obtain their parents' consent. This is a preventive measure to avoid a legal trouble later.

(2) Standard 2

Drane has specified standard 2 as cases in which matters to be decided by a patient become more difficult. At this level, elements in assessment of competency are the capacity to understand information and the ability to make a choice. Points to be examined are whether patients can understand about their present condition and the treatment proposed

by the medical staff and whether they can make a decision with a notion of the predictable results of the treatment proposed. When diagnosis of patient's disease is dubious or some risks are involved in the treatment proposed, or a patient has many alternatives including an alternative not to receive the treatment, patients are required to have not only cognitive ability but ability to understand and choose. Drane cites the following as an example.

Antonio who was an ironworker and a site foreman was admitted to a hospital because of heart disease. His home doctor and surgeon recommended him to undergo an operation to replace his heart valve. Though he understood the necessity for the operation, he was afraid of undergoing the operation. In the end, he came to a decision to live as long as possible without undergoing the operation, while paying as much attention as possible to his life style.

Drane states that it is hard to say that Antonio's fear of undergoing the operation was based on his capacity for understanding. However, it is also hard to say that his decision was made because of absence of his capacity for decision making, because his decision was a very practical choice[3].

According to Drane, at this level, those who are the mildly retarded, persons in condition of borderline case or with some personality disorders, and mature adolescents at age of 16 and older are regarded as competent.

How could be considered this standard focusing on a patient's assent competency in a psychiatric nursing setting ? A patient's competency of this standard should be examined when cares proposed are more difficult to understand than those proposed in cases of standard 1 and patients have some alternatives for decision-making, not all of which are 100 % in patents' best interest. Here, to consider this through a specific case study is useful. However, unlike in a medical setting, in a nursing setting, it is hard to find a care that may do harm to a patient when he or she chooses it from alternatives, or a care that enables a patient not to choose as one of alternatives. Though it's difficult, it is important to consider this issue through the following example. Occupational therapy is a very important therapy to psychiatric patients as well as an important nursing care. Suppose some work alternatives are proposed and a patient has to be engaged in one of them. When the patient has capacity for understanding and ability to make a choice, which are elements in assessment of competency of Standard 2, nursing staff must obtain the patient's informed consent and let him or her choose by himself or herself. Suppose now that the patient chooses woodwork as his therapy. Nurses who know his history of self-injurious behavior are anxious about his choice a little. However, to their surprise, he who is now in better condition has already regained the capacity for knowing what is right and the ability to select what is the best for himself in the course of medical treatment. Moreover, knives are not needed mostly to use in this woodwork. In this case, not from the symptoms he had, but from the ability he has now, he should be assessed to be competent for this work.

(3) Standard 3

Drane has specified standard 3 as cases in which matters to be decided are the most difficult. The elements in assessment of patients' competency in Standard 3 are capacities for appreciation and rational decision. Capacity for appreciation is the ability to understand the matter proposed along with deep consideration about it. And capacity for rational decision

cannot be gained without having individual definite belief or values. In other words, at this level, patient's ability to make a decision on the most difficult cases is evaluated.

As a model case at this level, the following case is thinkable. This is a difficult case connected with one's religious belief. A patient who is a follower of Jehovah's Witnesses does not admit need for blood transfusion in the operation he undergoes. Though his refusal of blood transfusion might result in death for him, he persists in his refusal of blood transfusion and gives his consent only to the operation. What matters with this case is whether his decision should be accepted as a decision made with his competency for decision-making. Drane argues that, as long as one makes the decision rationally based on his values and belief, his decision should be respected as the decision made under the competent condition[4]. Sometimes, respect for one's autonomy made with his competency for decision-making can be a fundamental value that outweighs the importance of one's life.

To be assessed "competent" at standard 3, individuals need to be able to reflect on what they do and have maturity to behave with consideration for others.

Considering those requirements in the case of a patient's consent to psychiatric nursing care, a case to which standard 3 is applicable might be rare. If any, it is hard to imagine that patients have competency required at this level. In such a difficult case, if a patient should be assessed as competent, informed consent must be obtained.

In this article, Drane's theory of competence assessment was introduced and her theory was applied to the cases in a psychiatric nursing setting. However, even if the theory is established, it is not an easy task to assess patients' competency in a medical setting. Especially in psychiatric medical or nursing care, many patients are in emotionally unstable condition. Even if they seem to have cognitive ability and understanding ability, it is thinkable that those abilities fluctuate as their emotional state changes every day. However, when a patient is assessed as competent more or less through careful assessment, it is thought to be very important to obtain informed consent directly from the patient. In view of principle of respect for autonomy, this is also important. Because, medical care and nursing with respect for human right can be developed only on the groundwork mentioned above.

4. Proxy Decision-Making

In case a patient is assessed as incompetent through such a careful assessment of competency, is informed consent of the patient unnecessary any longer ? It should be necessary also in such a case. In this case, someone who can make a decision on behalf of the patient is necessary. This is called proxy decision-making. It is vital to find someone who can represent the patient's interest most. The patient's family is not necessarily appropriate as a proxy decision-maker for the patient. In some cases, the patient's friend might be appropriate. Nurses and other medical staff should find a person who is the most appropriate to be the patient's proxy decision-maker. For this purpose, they can ask for intervention by an ethical committee. It is expected that discussion about this issue expands from now on.

5. Summary

Even in psychiatric nursing, a patient's informed consent is a requisite for protection of patient's human right and interest. In

obtaining a psychiatric patient's informed consent, the biggest challenge is how to assess the patient's competency. In view of the difficulty of the context of what is to be decided by a patient, the patient's competency should be evaluated depending on the level of competency required in each case. In case a patient is assessed as incompetent, informed consent of the patient's proxy should be obtained. In this case, it becomes a challenge how to select the most appropriate person as patient's proxy decision-maker. No matter what a patient's personality is like, patients should be treated with dignity. That's why medical and health care staff's efforts mentioned here should be required. Without these kinds of efforts, ethical progress in psychiatric medical care and nursing cannot be made.

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Informed consent in psychiatric nursing

精神看護におけるインフォームド・コンセント

－患者の判断能力の査定に焦点を当てて－

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要　旨

最近，インフォームド・コンセントが医療の中で大きな関心を集めている．生命倫理の視点からみると，医療関係者は患者の同意のもとに治療やケアを行わなければならない．しかし，患者の同意を取るに先立って，患者の判断能力の査定が必要である．ことに対象が精神科の患者のように判断能力に問題があるとされるケースでは，この査定がとりわけ必要となる．こうした場合，この査定はどのように実施したらいいのだろうか．査定に当たって，J.F.Draneの理論が参考となる．Draneの段階的尺度モデル（Sliding Scale Model）によると，判断能力には3段階がある．基準1は判断の対象となる内容がもっとも容易な場合で，ここで，判断能力の査定の尺度は認識力と同意能力の有無である．基準2は判断対象の難易度がもう少し上がる場合で，査定の尺度は理解力や選択能力の有無である．基準3は難易度がもっとも高い場合で，査定の尺度は評価能力と理性的な決定能力の有無である．本論文において著者は各々の基準を特に精神科の患者の事例に当てはめながら考察し，意思決定における患者の判断能力の問題に光りを当てた．精神科の患者であっても，基準1と2においては判断能力のある場合があるため，インフォームド・コンセントはまず患者本人から取るべきである．

キーワード

インフォームド・コンセント，精神看護，オートノミーの尊重，判断能力の査定，段階的尺度モデル