To the Editor in Reply

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To the Editor in Reply

I wish to thank Dr. Dana Lawrence for his Letter to the Editor in reference to my article entitled, "The Interface of Jurisprudence, Ethical Practice Management and Chiropractic Care of Older Adults."[1] I have every confidence that his historical accounting of the development of informed consent is factually correct, and I thank him for providing a historical context to the issue by focusing on the central tenet of self-determination. However, some of the concerns raised in his Letter to the Editor are, on the one hand, misdirected, and some concerns, on the other hand, do not accurately reflect how regulatory bodies consider issues related to informed consent during their deliberations into allegations of professional misconduct, concerns that reflect contemporary issues of jurisprudence.

Dr. Lawrence takes umbrage with my statement that informed consent is grounded in 5 ethical principles. As cited in my paper, this statement was directly derived from the article by Langworthy and Cambron which stated: "Informed consent, and its major components of disclosure, comprehension, voluntariness and competence, is largely grounded in 5 ethical principles."[2p419] These authors then proceed to list the 5 ethical principles as bulleted points of equal value: respect for autonomy (self-determination); veracity (truthfulness); justice; nonmaleficence and beneficence. Thus, if Dr. Lawrence disagrees that these principles are the grounding for the process of informed consent, then I submit his concerns ought to be directly toward Langworthy and Cambron.

As a council member of the regulatory body in Ontario [the College of Chiropractors of Ontario (CCO)], and current Chair and four-year member of the Investigation, Complaints and Report Committee (ICRC), as well as a panelist on several Discipline Hearings, it has been my experience that when the issue of

informed consent forms part of an allegation of wrongdoing against a member (registrant) factors in addition to self-determination are considered during Committee deliberations. For example, the Standards of Practice in Ontario that relate to Informed Consent (S-013: Consent, S-002: Record Keeping, S-005 Spinal Adjustment/Manipulation, just to name a few), which are all pursuant to legislation, state that consent cannot be obtained through fraud or misrepresentation (thus emphasizing the issue of veracity or truthfulness, a principle that Dr Lawrence de-emphasized in his Letter to the Editor) and that consent must be fully informed, voluntarily given, related to the patient's condition and circumstance and evidenced in writing or otherwise documented. If, for example, a practitioner obtained consent but did not disclose the risk, benefits and alternatives of care (which include watchful waiting) it is—and has been—considered to be an offense under the Standards, Regulations and Acts governing chiropractic in various provinces across Canada, and no doubt in other jurisdictions as well. Moreover Steineke, an expert in healthcare law, recently wrote that patients also have the right to know the following: the nature of the assessment or treatment to be rendered; who will be providing the procedure (some procedures, if they are not controlled acts, can be delegated to others); reasons for the procedure; material risks and consequences of not having the procedure.[3] Again, failure to disclose any or all of this information can lead to findings of professional misconduct against a member by licensing bodies. In other words, although Dr. Lawrence took great effort to emphasize that autonomy is the central hub of informed consent—a point with which I do not disagree—the other issues are of equal value as well, at least in terms of applicability.

As an illustrative contemporary example of how these issues play out in the real world, one need look no further than the recent controversy surrounding Dr Andrew Wakefield and his article published in the *Lancet* that discussed the purported link between the MMR vaccine and autism.[4] The Fitness to Practice Panel of the General Medical Council (the licensing body of medical doctors in the United Kingdom) released its finding in January 2010[5] and its Penalty decision in May 2010.[6] Put succinctly, Wakefield had his name “erased from the Medical Register” due to a number of findings of serious professional misconduct, including his failure to properly obtain informed consent from the subjects of his study, his non-disclosure of a conflict of interest, performing procedures for which he did not have either the ethical approval or requisite qualifications to perform

and, in many instances, being “dishonest,” “irresponsible” and issuing statements that were found to be contrary to his duty to ensure the information provided was accurate, particularly with respect to his communication with the *Lance*t. Thus, the issue of veracity is very important, perhaps more so even than autonomy, even in cases involving informed consent.

Again, I thank Dr. Lawrence for his historical account that positions self-determination as the central principle of informed consent. That said, I wish to emphasize to the reader that Complaints, Fitness to Practice and Discipline Committees look into all issues germane to informed consent during their deliberations into allegations of professional misconduct and professional members should bear this in mind and govern themselves accordingly.

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