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# AN ASSESSMENT OF THE ETHICAL AND LEGAL DILEMMA IN THE PRACTICE OF ANAESTHESIOLOGY: THE NIGERIAN PERSPECTIVE

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## Abstract

*The practice of medicine intersects with the legal system in two important ways. The ethical code establishes the framework of permissible conduct, through regulation, while the legal system provides patients and other entities recourse when these regulations are breached. Anaesthesia is a branch of Medicine and Anaesthesiologists care for patients at the extremes of health and illness, frequently employing life-sustaining technologies and procedures to restore health. Patients have widely recognised right to reject life-sustaining procedures that may be in conflict with the tradition of physician paternalism and authoritarianism derived from virtue-based ethics. This naturally leads to high expectations among the general public from the Anaesthesiologists. In the past, patients used to subject themselves to surgery after signing a simple willingness form, but in the present scenario, if any catastrophe occurs, it grabs news headlines, negligence is suspected by the general public. There has been a rising trend in medical negligence cases that the services*

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*provided by an anaesthesiologist come under the apprehension standard of care, protocols by which anaesthesiologists should abide to avoid legal consequences. This paper examines emerging ethical issues since the establishment of anaesthesia as a branch of medicine. The paper adopts the doctrinal methodology of research by examining primary and secondary sources related to the discourse. The paper further recommends adequate medical information by way of educating patients on their rights before any medical procedure among others.*

**Keywords**: Medical ethics, Legal ethics, Anaesthesiology, Medical practice, Legal practice

## 1.0 Introduction

In anaesthesiology, patients are mainly oblivious to the anaesthesiologist's presence or "behind the scenes" work. The care of patients in anaesthesiology almost always involves the use of equipment and machines. Most anaesthesiologists work in hospitals, although they do not directly admit patients into their care. A duty of care relationship is established when a patient is admitted to a hospital. This relationship extends to all medical staff interacting with the patient, not just the admitting team. Therefore, medical law scholars have contended that every patient we encounter in our work setting is entitled to a duty of care from the doctors with whom the patient interacts and the staff members who work for the hospital to provide patient care. The first part of this paper examines the concept and development of anaesthesiology while the second part deals with the ethical dilemma of the practice of anaesthesiology especially as it relates to medical ethics. The third part of the part of the paper reviewed consent as a standard for legal and medical practice while the latter part of the paper concluded with recommendations.

## 2.0 Concept and Development of Anaesthesia

Anaesthesia is from the Greek word, Anaesthesia meaning without pain/insensibility.[1] Under anaesthesia, medical procedures that would otherwise be technically impossible or cause a patient to experience severe or unbearable pain can be performed without causing them any discomfort. Anaesthesia is a medically induced state of controlled, transient loss of sensation or awareness. It may involve all or part of the following: amnesia (loss of memory), paralysis (relaxation of the muscles), analgesia (relief from or prevention of pain), and unconsciousness. Anaesthetized refers to a patient who is under the influence of anaesthetic medications.

When injectable or inhaled medications are used for general anaesthesia, the central nervous system is suppressed, leading to unconsciousness and a complete lack of sensation. With a less severe suppression of the central nervous system, sedation prevents the formation of long-term memories and anxiety without knocking the patient out. Anaesthesia, both local and regional, prevents nerve impulses from leaving a particular body area. In certain circumstances, this can be used alone (in which case the patient stays fully conscious) or alongside sedation or general anaesthesia. In order to anaesthetize a specific area of the body, such as a tooth for dental work or a limb that needs to have all of its sensations blocked, drugs can be directed towards the peripheral nerves. On the other hand, all incoming sensations from nerves supplying the block area can be suppressed by performing epidural and spinal anaesthesia in the region of the central nervous system itself. To achieve the types and degrees of anaesthesia suitable for the procedure and the patient, the anaesthesiologist selects one or more medications before the procedure.

The study and practice of giving anaesthesia are known as anaesthesiology. The medical specialty of anaesthesiology focuses on

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[1] https://www.nhs.uk/conditions/anaesthesia/#:~:text=Anaesthesia%20means%20%22loss%20of%20sensation,procedures%20to%20be%20carried%20out accessed 22 May 2022

providing patients with comprehensive care before, during, and after surgery. It includes critical emergency care, intensive care, and anaesthesia. Depending on where they received their training, a doctor specialising in anaesthesiology is referred to as an anaesthesiologist, anaesthetist, or physician anaesthetist.

The study of using anaesthetics to safely support a patient's vital functions during, after, and even before surgery forms the core of this specialty. Anaesthesiology has evolved from an experimental field with non-specialist practitioners using novel, untested drugs and techniques to what it is today-a highly developed, safe, and efficient branch of medicine since the 19th century.[2]

In order to restore health, anaesthesiologists frequently use life-sustaining procedures and advanced technology on patients who are at the most critical stage of health and illness. Patients have a well-established right to refuse life-sustaining treatments that might go against the paternalistic and authoritarian medical traditions that are derived from virtue-based ethics. To ensure ethical best practices, the medical profession is nevertheless subject to strict legal requirements and ethical standards. Extant legislation, professional and societal ethics provide fundamental guidance to professionals in practicing their profession. Ethical rules are first enforced by professional bodies like the Medical and Dental Council of Nigeria while legal rules are enforced by courts of law.

## 3.0 Overview of the Basic Principles of Medical Ethics

Formal declarations that establish norms of moral behaviour for social groups are called codes of ethics. What is good for people and society, as well as the divisions and definitions of what is right and wrong in the world of ideas, are all aspects of ethics. Social norms regarding ethics are dynamic, susceptible to shifting externalities, and highly influenced by local social, cultural, and economic factors. Ethically, to achieve best

[2] Matthew, M K. Legal and Ethical Aspect of Anesthesia, Critical Care and Preoperative Medicine. https://doi.org. accessed 10th July 2021.

practices, the medical profession is subject to strict legal and ethical standards. Undoubtedly, the translation of the Medical and Dental Council of Nigeria's code of conduct is mainly up to the individual conscience of the profession's members, who it is hoped will abide by the guidelines daily.

Primarily, the principle of non-malfeasance involves an intention to prevent needless harm or injury, which can occur through acts of commission or omission or, simply put, through neglect (DO NO HARM). A physician's duty to act in the patient's best interest and uphold various moral principles to safeguard and defend the rights of others is known as beneficence. (DO GOOD) Moreover, Autonomy gives patients the power to make decisions about their lives, including medical ones. This includes but is not limited to, making an informed decision about his care and treatment without being coerced.[3]

The goal of the professional code of conduct is to educate professionals about the standards of conduct that are expected of them in the performance of their duties, as well as to inform employers, other professions, and the general public about the standards of behaviour that professionals should be held to when performing their duties.

## 4.0 Ethical Dilemma in the Practice of Anaesthesiology

Anaesthesiologists deal with a variety of conventional ethical issues in their work, such as clinical negligence and failing to recognise a medical condition that makes surgery risky and take the necessary precautions per current medical guidelines, which can result in invalid consent. Regardless of the title, a medical professional, including anaesthesiologists, must treat patients with reasonable care. Section 31 of the code of medical ethics in Nigeria provides that medical practitioners

[3] Freeman, B S. 'Ethical Issues in Berger J S Anaesthsiology Core Review' (2014) New York McGraw Hill Education Medical.

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shall be dedicated to providing competent medical care with compassion and respect for human rights and dignity.[4]

Although it can be challenging to distinguish the risks of complications during or after Anaesthesia from those of the procedure, three main factors contribute to the risk of complications: the patient's health, the procedure's complexity (and stress), and the anaesthetic technique. Proper pre-anaesthesia evaluation is necessary because the patient's health significantly impacts all these factors. Major preoperative risks can include death, heart attack, and pulmonary embolism[5]. Ethical conundrums have grown in quantity and complexity as medical technology has advanced. They are in a good position to provide critical care, which calls for expertise in airway management, continuous monitoring, pain control, resuscitation, and other areas. However, the rapid advancement of technology, the improved safety profile of anaesthetic drugs, and the growing reliance of other branches on anaesthesia have given rise to several social, legal, medical, and ethical issues. Expert competent anaesthesiologists will adhere to specific protocols and deliver appropriate standards of care.[6].

## 4.1 Consent as a Standard for Legal and Medical Practice

Getting consent from patients before any medical procedure is a standard practice in the medical field. This helps shield patients from assault and battery. The higher standard of informed consent protects patients' rights to autonomy, self-determination, and inviolability. However, different jurisdictions have different legal requirements for obtaining informed consent, which are constantly interpreted differently. While some jurisdictions still adhere to the outdated standard of the reasonable medical professional, others use the reasonable physician standard.

[4]Uwakwe Abugu, 'Pinciples and Practice of Medical Law and Ethics' 1st.ed. Pagelink Nigeria Limited, 2018.p.157.

[5] https://en.m.wikipedia.org/wiki/anaesthesia. accessed 10 July 2021

[6]Michael, A.G., et al. Health and Human Rights in a Changing world. (1st edn Routledge Publishers, New York,.2013) 86.

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Informed consent serves an ethical, more abstract and ideological purpose. It aims to protect patient autonomy by ensuring that treatment is chosen and directed toward the patient's goals. In this situation, informed consent aims to swap out physician-centered models with more patient-centered approaches as the ethical paradigm for decision-making. Rather than being a single event, informed consent is a process that starts before the document is "signed" and lasts as long as the decision is still important. Age, mental health, and religious views all play a significant role in one's ability to consent or not.

The patient's voluntary consent is necessary. The patient must be of the age of majority to give consent and be able to exercise their free will without interference from any aspect of coercion or force, including fraud, overreaching, or other covert forms of restriction.[7]

Consent is defined literally as granting someone permission to do something. As stated by the Medical and Dental Council of Nigeria, any procedure, including major diagnostic or therapeutic procedures involving general anaesthesia or intimate examinations, requires the patient's informed written consent before proceeding.[8] The legal term "informed written consent" refers to a patient's independent and informed permission to receive medical or surgical treatment. A thorough discussion of all pertinent details of a proposed treatment and its alternative procedure, if available, between a physician and patient and any applicable family members is a necessary part of informed consent. When making decisions, accurate information transmission is pertinent and important. The following details must be disclosed to the patient: the nature of the illness, the options for management and treatment, including risks and benefits, the success and failure rates, side effects, the prognosis of the illness, and the cost of the treatment period. All necessary information must be given

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[7] Stephen, P. Marks., Health and Human Rights; Basic International Documents. (3rd edn. Harvard University Press. London)

[8] Rao. N G. Text Book of Forensic Medicine and Toxocology. (2nd.ed. New Delhi. Japee Brothers Medical Publishers Ltd 2010) p.23 44.

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to the patient. The information should be explained in their native tongue; if necessary, an interpreter may also be used. If the patient is deaf, dumb, or blind, extra care must be given to ensure he fully understands everything. Advice may be given voluntarily by the patient.

Since the 1950s, patients' rights to accept or reject recommended treatment have received more attention. Nonetheless, the rejection of medical paternalism did not supersede anaesthesiologists' authority in their interactions with patients. Although, anaesthesiologists were no longer in a position to decide how best to treat their patients unilaterally, they still held gate keeping influence due to their exclusive access to medical records. This description of the relationship between a patient and an anaesthesiologist in which the patient makes medical decisions, but the anaesthesiologist provides information and most medical products and services is no longer valid.

Patient autonomy has entered a new era in medicine. Today's Patients rely less on their doctors to provide them with medical information and resources because they can access the internet and social media. The dominance of anaesthesiologists over medical information and, increasingly, over patients' access to medical goods and services has decreased in recent years due to widespread access to the internet and social media. Patients no longer visit their doctors, explain their symptoms, and wait for a differential diagnosis. These days, some patients have already done extensive research on potential diagnoses and symptoms before visiting the doctor. Some patients who have experienced rare diseases may even be more knowledgeable about their illnesses than some of the medical practitioners they consult.

The health care system should not only deliver high-quality treatment but also empower patients to make health care decisions that align most closely with their desires, values, and cultural background. Two concepts are central to this discussion:

(a) Patient-centered health care and

(b) Shared medical decision making.

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The goal of the patient-centred healthcare movement in contemporary medicine is to customize treatment to meet each patient's needs, preferences, and unique circumstances. From our perspective, patient-centred processes that address the intricacy of healthcare decisions should be the focus of shared medical decision-making. It encourages family, friends, or other caregivers to play a role in helping the patient make medical decisions that align with their values and goals to the extent that the patient decides.

The 1980s saw the rise in popularity of shared decision-making, which is still the recommended paradigm for interactions in health care. In general, shared decision-making refers to the collaboration between the patient and the anaesthesiologist to make medical decisions that align with the patient's preferences and values. Similarly, regarding best practices, the patient and anaesthesiologist should have an informational exchange in which the patient shares values and preferences and informs them of the range of options available. In some situations, depending on the available treatment options, the anaesthesiologist may need to assist the patient in defining or refining their values and care goals.

While most forms of shared decision-making assume that the anaesthesiologist has access to information, understanding, and medical resources that the patient does not, there appears to be a consensus that patients should, whenever possible, participate in and ultimately make their own medical decisions. Therefore, the transition from patient autonomy to medical paternalism still needs to completely change the role of medical professionals in the therapeutic relationship.

The anaesthesiologist is indispensable as a mentor, instructor, and facilitator in the collaborative medical decision-making process; even though the patient may know what to do in some circumstances, making the right choice can be challenging.

It is usually frightening to hear news about one's health that could change one's life. Choosing the best course of action in this scenario exposes a person already compromised by ill health and the shock of this lifethreatening news to a convoluted process with numerous ethical and legal consequences.

It is easy to speculate but difficult to substantiate the reasons for these deficiencies in patient-centered healthcare decision-making. Estimating risk can indeed be challenging for anaesthesiologists. Patient-centered discussions and decision-making processes demand a substantial time commitment. Additional pressures on anaesthesiologists, such as the possibility of a civil lawsuit and the need to maintain high patient volumes in traditional fee-for-service healthcare systems, may deter them from making patient-centered decisions. The latter may discourage some anaesthesiologists from engaging in patient-education campaigns that encourage patients to choose palliative care alternatives over more invasive surgical procedures, which may, at least for the time being, result in lower reimbursement for their doctors.

How can informed consent be implemented in practice? A thorough practice of informed consent is complex, requiring flexibility to address its multiple goals.

These goals include

a) The legal dilemma of protecting patients' rights,
b) The ethical dilemma of supporting autonomous decision-making,
c) The administrative dilemma of providing efficient health care
d) And the interpersonal dilemma of building the trust needed to proceed with therapeutic interventions.

In light of this, we provide the following remarks to assist anaesthesiologists in upholding informed consent's moral and legal requirements. The recommendations are supported by clinical experience in anaesthesiology and the multidisciplinary literature reviewed here.

The patient-physician relationship was revolutionized by rejecting medical paternalism in favour of respect for patient autonomy. In the past, the medical community and society upheld the ethical standard that an anaesthesiologist's primary responsibility was to advance the patient's welfare, even at the price of the latter's autonomy. The fundamental tenet


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of the paternalistic paradigm was that anaesthesiologists were the best people to decide what was best for patients due to their training in medicine. In Nigeria, where doctors frequently oversee the administration of anaesthesia by nurses and other allied health professionals, anaesthesiologists may be held vicariously liable for the other's careless actions. The most frequent causes of legal action taken against anaesthetists are mistakes when administering dosage, equipment malfunctions, technical breakdowns, and improper consent validation. As a result, a criminal or civil case may be charged against an anaesthesiologist in court. Nevertheless, Anaesthesiologists are prosecuted and punished in criminal cases. Nonetheless, complainants receive compensation in civil courts.

However, there are numerous decisions by courts in Nigeria concerning the subject of consent. In *Medical and Dental Practitioners' Disciplinary Tribunal v Okonkwo*[9], the Supreme Court held that doctors must obtain patients' consent before performing any medical procedures.

> Every human being of adult year and sound mind has a right to determine what shall be done with his own body and a surgeon who performs an operation without his patient's consent commits an assault. A medical practitioner cannot examine, treat or operate upon a patient, without the patient's consent, except by committing a trespass or assault.[10]

Anaesthesia requires a separate consent form, as surgical consent does not cover anaesthesia. This form must be completed thoroughly, outlining all the advantages and disadvantages and may include anaesthesia options. When a surgery could limit or affect a person's ability to have sex or could kill an unborn child, it is preferable to obtain the spouse's consent as well.

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[9] (2001) 7 NWLR (PT 711) 206

[10] Gardozo J.S vs Society of Newyork hospitals. Beauchamp and Faden. 1986.

Examples of these situations include sterilization procedures.[11] Informed written consent is required for planned blood transfusions, but consent can be waived during surgery if a blood transfusion is necessary to save the patient's life. The patient has the right to revoke her consent at any moment because it is a voluntary act. If a patient withdraws their consent, a medical professional cannot treat them further. In order to prevent anaesthesiologists from being held accountable for any worsening of the patient's condition as a result of treatment being delayed due to lack of consent, refusal to give consent is just as important as giving consent and needs to be documented with a date and time. It is advisable to speak with the patient's family and get their signatures to serve as witnesses. The patient's relatives who have signed as witnesses are less likely to report something unwanted to the police or court if it occurs.

Uwakwe opined that the law has been established that a doctor cannot treat or even touch a patient without the patient's valid consent. He further stated that any competent individual has the right to refuse medical treatment, no matter how foolish they may be, in doing so, even if it results in their death. Furthermore, no doctor has the right to force someone to receive medical treatment against their will, regardless of how helpful or essential it may be.[12]

### 4.2 Recording

'*Verba volant, scriptamanent'* (meaning, spoken words fly away, written words remain) is a quote by Emperor Titus addressing the Roman Senate around 80 AD.[13] While the significance of proper documentation has long been understood, a doctor's involvement in a legal dispute frequently makes its actual worth apparent. In an interdisciplinary healthcare team, adequate clinical documentation promotes communication and guarantees appropriate continuity of care. Documents containing all the information

[11] *A. K. Mittal. Dr. v. Raj Kumar* 2009.606.

[12] Uwakwe Abugu, 'Principles and Practice of Medical Law and Ethics' 1st.ed pagelink Nigeria Limited.2018.pg.178

[13] Bali A.et al. Management of Medical Records. Facts and Figures for Surgeons. 2011.

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regarding a patient's history, clinical findings, diagnostic test results, pre- and postoperative care, patient progress, and medication are known as medical records. Medical records are the only way to resolve legal disputes since they provide authentic, current, and accurate details of past events. They record every facet of the patient's history and every procedure detail. Informed written consent plays a critical role in protecting both the patient's and the physician's interests; the method for obtaining consent varies based on the patient and procedure. A guide on keeping accurate anaesthesia records can be found in the Nigeria Society of Anaesthesiologists' guidelines for Nigerian anaesthesiologists in practice. Some of the crucial things to remember are the following: the anaesthesia checklist (marked and signed), patient contact numbers, demographic information about each patient with a unique hospital identification number, and others.

### 4.3 Pre-operative dilemma

The paradigm of patient care for anesthesiologists begins in the preoperative phase, when one of their primary duties is assessing and optimising the surgical patient's physical state to prevent unfavourable outcomes. Surgery-related problems can arise from incorrect diagnoses, improper anaesthetic techniques, or failure to recognise a medical condition that makes surgery risky and take the necessary action by current medical guidelines. Since the anaesthesiologist and the patient are typically less acquainted, good communication is essential to building rapport and ensuring the patient feels comfortable. Patients first see the surgeon about their condition, and the surgeon then refers them to the anaesthesiologist. Patients frequently need to learn whether the anaesthesiologist is a doctor or what their precise responsibilities are since they have never met with the anaesthesiologist. This highlights the necessity for the anaesthesiologist to build a strong rapport and communicate effectively with the patient to gain their trust. Even though the surgeon might not think the patient needs specific investigative reports, the anesthesiologist might. Additionally, an internist or

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cardiologist who has already certified a patient as "fit" for anesthesia may provide the surgeon and the patient with an opinion that differs from the anesthesiologist's. Persuading the patient and the surgeon that the patient requires additional optimization prior to surgery is impossible for the anesthesiologist. In general, anesthesiologists are more reliable than internists or cardiologists. The dilemma in this situation is how to voice one's opinion without endangering one's practice, losing the trust of the patient and surgical colleagues' trust, and avoiding a direct conflict with the internist or cardiologist. In the author's anaesthesia practice, a significant issue that has not received much attention but is frequently faced is a patient's "need" for surgery. Since most anesthesiologists think this falls under the surgical purview, they rarely investigate it. They frequently fear losing the practice or believe they need more expertise to comment on this. What should an anaesthesiologist do if they are confident, based on evidence-based guidelines, that the patient does not require the proposed surgery? Should the anesthesiologist swallow their pride and administer the anesthesia, or is it appropriate to advise the patient to seek a second opinion when everyone in the medical fraternity practices moral behaviour? This might be fine.

Nonetheless, surgery is very profitable in this day of medical commoditization, and it is usual to see surgeons "looking" for "cases" to operate. This is particularly important in nations where doctors still maintain paternalistic views, which can be readily used to take advantage of patients' ignorance of medicine. The author believes this is a significant conundrum that touches on the anesthesiologist's ethics. Most countries require informed consent before performing surgery or administering anesthesia, though there is disagreement over whether this consent must be given separately for each procedure.[14]. Before requesting that patients sign the common consent form, the anesthesiologist should know how much to explain about the anesthetic procedure. In certain areas, many

[14] Kumar, A. et al. Consent and the Indian Medical Practitioner, *Indian Journal of Anaesthesia.*2015.

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patients prefer to leave anesthesiologists alone and do not want to know specifics about anesthesia. For anesthesiologists to obtain a patient's "Informed Consent," they must precisely know how much information to impart about the anesthetic procedure. It frequently happens that the surgeon disapproves of the anesthetist fully disclosing to the patients all the risks associated with both the surgery and anesthesia out of concern that the patient might decide not to proceed. A patient may occasionally be scheduled for an unnecessary surgery. In both situations, the dilemma facing anesthetists is whether to offer their honest assessment in the patient's best interest or to persuade them that it is not their role to counsel the surgeon; in the latter case, they might decide not to offer an opinion out of concern for losing their practice.

## 4.4 Intra-operative Dilemma

A patient in anesthesia is mainly oblivious to the anesthesiologist's presence or “behind the scenes” work, making anesthesia a unique specialty in medicine. Using devices and machinery to care for patients is a given when anaesthesia is used. These elements could lead to an ethical conundrum and the dehumanization of patient care. Even though it is gradually diminishing, surgeons’ tendency to be the “captain of the ship” is still a significant problem that can lead to conflict. The operating room is one of the few hospital environments where teamwork is essential to efficient operation. Anesthesiologists need to act diplomatically in order to prevent disputes during this time. Observing a group of people jump on the patient and the surgeon attempting to palpate a swelling at the last minute is pretty upsetting. Silence, composure, and unwavering commitment are vital traits for an anesthesiologist during the intra-operative phase. However, this can frequently be read as being submissive, and other professionals can exert dominance. It is, therefore, equally crucial to be assertive and unflappable.

## 4.5 Post-operative Dilemma

As a preoperative physician, the anesthesiologist is essential in the postoperative phase of patient care. Some anesthesiologists, particularly the "busy" ones, tend to hand off patient care to the surgeon during this time. This is a serious drawback because the anesthesiologist is better suited to handle postoperative care, including pain management. Anesthesiologists now have far more duties during the postoperative phase until the patient is sent home in this era of ambulatory surgical procedures.

## 5.0 Conclusion and Recommendation

The anesthesiologist is responsible for coordinating all preoperative care, as previously mentioned. Before undergoing surgery, all patients must pass through this one entity. They can also advocate for the morally significant procedure of patient-centred decision-making with the available infrastructure and resources. They could compile a succinct, easily understood message for the patient from all pertinent clinicians and then give the patient and their selected advocates the time and space to discuss and engage with clinicians to make better patient-centred healthcare decisions. The anesthesiologist would reduce clinically pointless negligence by acting as a checkpoint in the current healthcare system. The anesthesiologist can act as a helpful forum for prompt and courteous discussion when there is disagreement among the surgeon, cardiologist, and anesthesiologist regarding, for example, the preoperative imminent risk for a patient or the best course of action.

Due to their skill in airway management, anesthesiologists have a significant leadership role in ethics and medicine, a role that was strengthened during the COVID-19 pandemic. Because of anesthesiologists' unique ethical and legal issues, their profession needs to adopt a more proactive and down-to-earth approach. It will be beneficial to include ethical concerns in the training of anesthesiologists and to have two distinct consent forms: one for anesthesia and another for surgery.

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