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Should informed consent be imposed in the forensic field?

Review Article

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SUMMARY

Introduction. *Forensic practice must be subject to technical, scientific and ethical standards and principles to achieve its objective, which is to provide the Public Prosecutor's Office with the evidence that will help the latter determine a criminal act has been committed; forensic doctors of the Public Ministry agency must examine the physical, mental and health status of suspects, in order to obtain evidence linking the accused with the victim and crime scene; this goal may be hampered by the fact that, by government order, individuals may refuse a medical examination; one example is the informed consent, which is a procedure that is*

currently instituted in the clinical field, but in the forensic field allows the accused to refuse medical examination; this fact can prevent the forensic doctor from obtaining evidence linking them to the crime scene and the victim and thus the authority can not integrate the Investigation File, preventing delivery of justice.

Objective. *Determine if the informed consent procedure should be imposed in the forensic field.*

Conclusion. *Imposition of informed consent in forensic field is not acceptable, because it prevents the delivery of justice and favors impunity.*

Keywords: *Informed consent, Forensic Practice.*

INTRODUCTION

The expert medical-forensic work, carried out in the agencies of the Public Ministry, must satisfy correctly and completely its objective, that is to look for indications, to analyze them and to emit conclusions as a certificated opinion so that the authority can link to the victim with the facts and the suspect. In order to achieve this goal, the forensic doctor must abide by rules and circumstances, which are different than those that are followed and presented in the medical-clinical setting.

As an example of the above, in clinical practice the symptoms and signs of the disease are obtained and the agent that is causing them is determined; on the other hand, in the expert area the injuring agent that produced the injuries in the body of the person is no longer present and then the forensic doctor must determine what caused those damages by applying his experience, reasoning and knowledge in the study of the evidence; it is an investigation about past events and as the injuries undergo changes, it is important that the medical examination is carried out as soon as possible to avoid that those changes prevent knowing data as the moment in which the damages occurred;

the purpose is for the authority to know if those involved are telling the truth about these questions; therefore, when there is a government order that can prevent the doctor from performing a psychophysical exploration on the person involved in a legal problem, the latter will have difficulty obtaining the evidence and issuing an opinion about them.

The Government of Mexico City has established a Protocol on the way in which the medical examination must be carried out; however, the lack of deontological and professional knowledge on the part of the people who participated in its elaboration has been evidenced; within the norms contained in this protocol is to request the informed consent to all the individuals that the authority requests that they be reviewed by the doctor of the Public Ministry agency; by leaving the decision to accept or refuse to be explored in the hands of the individual and knowing the consequence of the results, it is obvious that the accused will not accept it, avoiding the objective of the expert work.

Throughout this review we will analyze the informed consent procedure and its importance in the medical-clinical field. In criminal matters, it will be demonstrated that informed consent can not be imposed in the expert's practice, since the individuals who must request the acceptance of the medical review are not patients but people presented, so there will be no medical relationship (foundation of the medical-clinical act) but it is a person-expert meeting (foundation of the medical-expert act). In addition, we will analyze the function that the forensic doctor has in the criminal process and its contribution to the crime's accreditation.

LEGISLATION APPLICABLE TO INFORMED CONSENT IN MEXICO

In Mexico there are three legal documents that regulate the functioning and participation of informed consent: The Regulation of the General Health Law in the matter of the provision of medical care services, the Official Mexican Standard NOM-004-SSA3-2012 of the Clinical File and the Agreement that establishes the protocol for the legal medical examination in the examinations of physical integrity or probable clinical age, established by the Government of the Federal District.

a) Regulation of the General Law of Health regarding the provision of health care services

Article 80 states that "*in any hospital and as long as the user's condition permits, upon receipt must be obtained your written and signed authorization to practice, for diagnostic or therapeutic purposes, the medical and surgical procedures necessary to reach a diagnosis or to address the condition in question, having to clearly inform the type of document that is presented for signature!*".

b) Official Mexican Standard NOM-004-SSA3-2012 of the Clinical File

This NOM expressly regulates the figure of Informed Consent, which is defined in its number 4.2 as "*the written documents, signed by the patient or their legal or closest family representative in a link, through which a procedure is accepted, medical or surgical for diagnostic, therapeutic, rehabilitative, palliative or research purposes, once information has been received on the risks and benefits expected for the patient!*".

It is established that the Consent Letters under information must contain at least the authorized act and the indication of the risks and benefits expected from the authorized medical act; the events that require letters of informed consent are hospital admission and the diagnostic and therapeutic procedures considered by the doctor as high risk.

c) Informed Consent in criminal matters in Mexico City

This Agreement was published on February 24, 2009 in the Official Gazette of Mexico City. In Article 3 paragraph II defines the informed consent as "*Authorization of the person presented or, in the case of a minor, who exercises parental authority, guardianship or their legal representative over it, which must be in writing and signed autograph, for the practice of examinations of physical integrity or probable clinical age, once it is aware of its objective and need*". Article 10 establishes that, before beginning the practice of the requested examinations, the medical personnel will request the competent authority the presence of a relative, who exercises parental authority, custody, guardian or legal representative of the person presented; if this were not possible, the authority would appoint a public servant of the same sex as the person presented, who would be present during the practice of the studies requested.

In the medical-forensic exploration, a problem arises when the authority, in the absence of the presence of a relative, guardian or legal representative, appoints a public official who will be present during the study; this goes against what is established by the laws and may give rise to liability on the part of the doctor if it is performed in the presence of

that public official without having legal authorization to do so, since there is no person legally representing the minor at which is informed about the medical-forensic procedure and together with the minor allow the agency's doctor to carry out their work. We must understand the law as the instrument of protection for minors, which is why medical care and quality must be regulated, and even more so in the criminal legal sphere. The Political Constitution of the United Mexican States establishes in article 18 that "*the operation of the system in each order of government will be in charge of institutions, courts and authorities specialized in the procurement and administration of justice for adolescents. The orientation, protection and treatment measures that merit each case may be applied, taking into account the comprehensive protection and the best interests of the adolescent*". In criminal matters it is very important to talk about the treatment given to minors in the investigation process, when a crime has been committed, whether the child is the offender or the victim.

Article 11 of the Agreement establishes that "*when any of the cases indicated in the previous article is updated, for the practice of the requested examinations, the medical personnel must obtain the Informed Consent of the person presented*". While Article 13 stipulates that "*in order to obtain the Informed Consent of the person presented, the medical personnel will inform him of the type of medical legal examinations requested, their purpose and objective*." Finally, article 15 mentions that "*the Informed Consent will be signed in two original copies; one will remain with the medical personnel and the other with the competent authority for the pertinent legal effects*."

INFORMED CONSENT

The existence of a relationship between the patient and the health professional is based on informed consent. Every well-informed patient is able to make all the decisions that affect him in his life and in his health. In this context, a decision is autonomous when it meets three conditions: voluntariness, information and capacity, with capacity being the most difficult to assess. Health capacity, defined as the ability to perform a specific task, refers to making decisions regarding the diagnosis, treatment, prognosis and care of your disease. Sufficient information gives validity to informed consent, translates the respect for the autonomy of the person and contributes to improving equitable access to health care¹. The ability to make decisions in health is defined by the presence of a certain number of skills, mainly psychological (affective, cognitive, volitional). The sanitary capacity criteria refer fundamentally to the aptitudes of patients to receive, understand and rationally process information, make a decision and communicate it appropriately. The assessment of health capacity is usually subjective and prudential in most cases, since there are still no criteria (definition of skills and abilities to be evaluated), standards (degrees of sufficiency to be demanded) and protocols (process to determine it) agreed upon to perform it objectively and adequately². Will is probably the most important ethical concern a doctor faces. This is particularly relevant when examining an individual to ensure his or her ability to be detained or interviewed; both categories complete the main work of specialists in forensic medicine.

Consent can be tacit or explicit. It can be verbal or written. But in a competent adult he must be informed and certainly without coercion. A particularly problematic area of medical practice is that of the medical examiner, where there is typically no opportunity to develop this relationship in the traditional manner. While the consent has been in theory provided by the detainee, some may consider that it has been obtained to a degree of harshness by the circumstances in which the consultation takes place³. For example, when a judge wants to clarify such extremes in the case of a subject, call experts to make an expert opinion. They are usually forensic doctors or forensic psychiatrists. The surprising thing is that these specialists also do not have any standardized procedure to evaluate such things, at least one that is applicable in a clinical context of decision making. The most interesting of all these contributions is to have rightly pointed out that the exploration of capacity can not be merely psychiatric but also needs to address the neurological area⁴.

As noted, informed consent is not an event but rather a process; it is the autonomous authorization of a medical intervention. The consent presumes the capacity of the person and requires relevant information; It must be obtained voluntarily without misinterpretation or fraud. Knowledge includes the contribution of the mind in understanding information, perceiving relationships, elaborating concepts, formulating principles and making appraisals of learning. Physicians, like educators, are adequate to carry out the role of a discussion about relevant knowledge so that an autonomous decision can be made⁵.

It can be affirmed that the informed consent is a complex process that requires

to evaluate several elements, which need a relationship between the doctor and the person that is going to be submitted to the study so that it can be carried out in the best possible way; It can only be carried out in the medical-clinical field, as it has been established in our laws and that is why they do not mention the medical-forensic scope for its execution. One of the important factors for informed consent is the capacity of the persons, a fact that can be difficult to know for the forensic doctor, since his performance with the person presented has a duration of minutes and takes place when he is arrested and made available to the agent of the Public Ministry.

Consent in the medical expert performance should not be imposed and if so, it would not have to be formal in the sense of being expressed in writing, but it would be a tacit consent. The forensic doctor can perform his work ethically and without affecting the human rights of the person to be examined, informing him in detail what is his function, how the procedure is carried out and who requests the study to be carried out. It can also give the detainee to understand that his action will be impartial and that he is not at the service of any of the parties to the conflict, but of the authority. If the procedure is not authorized, it will cause that the indications obtained from the medical-forensic examination can not help to establish the link of the accused with the victim and with the facts, substantial elements so that the agent of the Public Prosecutor's Office can determine what is involved. a crime and justice can be done to the victim.

To understand the role played in the criminal process by the integration of the normative elements of the crime, we

will talk about what the body of the crime is and when it should be integrated.

BODY OF CRIME

Until before June 2008, the existence of the body of the crime and the probable responsibility of the suspect must be proven; by body of the offense not only the objective or external elements would be understood, but also the normative ones, in case they are included in the description of the criminal type. In order to obtain an arrest warrant or a formal prison order, the Public Ministry did not require the demonstration of the subjective elements of the crime - the fraud and the guilt - because it would not be until the final judgment when the judge should enter the study. the subjective aspects of the illicit⁶.

Article 168 of what was the Federal Code of Criminal Procedure, describes the body of crime as the "*set of objective or external elements that constitute the materiality of the fact that the law indicates as a crime, as well as the normative, in the case that the typical description requires it.*" With the reform of June 19, 2008, this definition changes, a fact that is explicitly stipulated in the New Criminal Justice System, which establishes that with regard to the order of attachment to process, to satisfy the requirement that the Law point out the fact imputed as a crime, it is enough for the judge to frame the conduct to the criminal norm, in a way that allows identifying the reasons that lead him to determine the applicable criminal type.

The Political Constitution of the United Mexican States establishes in its article 19 first paragraph that "*in order to dictate an attachment order to process it is necessary to fulfill certain requirements of*

form and substance. Regarding the latter, it is necessary that: 1) there is information that establishes that an act has been committed, 2) the law makes this act a crime and 3) there is a likelihood that the suspect committed it or participated in its commission". The constitutional text contains the guidelines that mark the transition from a mixed criminal justice system to one of accusatory, adversarial and oral court, as revealed by the substitution of the expressions "prove" by "establish" and "body of crime" by "fact that the law indicates as a crime", which denote a paradigm shift in the way justice is administered in criminal matters; there is no longer a need for "proofs" nor is it required to "prove" that an illicit act took place, thereby preventing the trial from proceeding in the constitutional term; it is no longer permissible that in the preliminary stage of the investigation tests are set up by the Public Prosecutor's Office on their own and as before -as it happens in the mixed system-, which eliminates the unilateral procedure for obtaining evidence; thus the trial is strengthened, the only procedural stage in which, with equal conditions, the evidentiary production of the parties takes place and the facts that are the object of the process are demonstrated. The constitutional rule no longer requires that the object of evidence falls on the so-called "body of crime", since that exercise is only required for the issuance of a sentence, stage where the judge decides whether the crime was or not accredited.

THE FORENSIC DOCTOR AND ITS FUNCTION

Forensic Medicine is the medical knowledge applied in the investigation of crimes for the administration and administration of justice⁸. In the medical act that is executed in the medical-clinical

field (preventive, curative, palliative or rehabilitation), the bioethical principles of beneficence, non-maleficence, justice and autonomy must constitute its base; these principles also apply in the medical-forensic field, but as a medical-expert act (making certifications and judgments); the objectives of this area are different from those of clinical medicine; the medical-expert act is not necessarily beneficial for the person to certify or in which the results of the expert report fall, since by the fact of being involved in a legal problem, it is possible that the effects have an adverse effect on their interests.

The inequalities between the medical-clinical act and the medical-expert act originate that the application of the process of the informed consent is necessary in the medical-clinical field but not in the medical-expert act; to deepen and know the reason for this reasoning understand the following: The function of the Forensic Medical Experts is to search, detect and analyze evidence and if they have sufficient strength, serve for the authority to back an accusation and prove a criminal act; they will also serve to demonstrate if they could have occurred in other circumstances of time or form, or to know the physical, mental and health status of the person, to ensure that they are in conditions to be detained or to be interrogated. The medical-forensic examination is useful and necessary for the authority to verify the authenticity of the accusations, because some may be done to harm another person or are based on inaccurate findings and descriptions, or misinterpreted observations; It is common that these false accusations cause innocent people to be involved in judicial processes that harm them in all areas (social, labor, family, economic); or on the contrary, that as a result of the denial of the alleged victimizer to the medical examination, the

affected person remains in a state of defenselessness, since the authority does not have the evidence obtained by the medical expert and that establish the link victim-victimizer, necessary for it to determine the guilt of the accused and justice is done to the victim.

The detainees must undergo a medical examination for their safety, that of the arresting agents and as part of the criminal process for the authorities to integrate the Investigation Folder ⁹. The medical examination must be carried out as soon as possible, based on the Set of Principles for the protection of all persons subjected to any form of detention or imprisonment, adopted by the General Assembly in its resolution 43/173, of December 9, 1988. This document establishes, in Principle 24, that "*offer to any detained or imprisoned person an appropriate medical examination as soon as possible after admission to the place of detention or imprisonment and, subsequently, such persons shall receive medical attention and treatment whenever necessary*"; Principle 26 states that "*due record shall be made of the fact that a detained or imprisoned person has been subjected to a medical examination, the name of the physician and the results of said examination.*"

The Forensic Medicine is diagnostic and should perform all those procedures determined by medical propaedeutics through a history (questioning of personal history and to know the mental state of the person), a physical examination (inspection, palpation, percussion and auscultation) and the semiology (detailed description of the injuries and their characteristics), that do not cause damage to the health, physical integrity, function or dignity of the person. The medical-forensic

examination does not imply any risk for these goods nor is it necessary for a hospital admission or for diagnostic procedures considered as high risk; These are requirements indicated by the Official Mexican Standard NOM-004-SSA3-2012 related to informed consent.

The examination of the medical expert consists in corroborating the existence of damages (injuries) in the body of the person evaluating the parameters that establish the canons (type, vulnerating agent, shape, dimensions, color, location, direction, distance to which they were made, plans that interest, etc.). Although in some cases the time factor plays in favor of the clinician, the forensic doctor usually has against that factor, because time causes changes in the lesions, hindering the reconstruction of the original conditions.

To perform the legal medical examination, the person will remove their clothes from head to toe and from front to back, a situation that can be compared with what happens in the outpatient clinic of any healthcare institution; At this level, informed consent is tacit, and is justified by the fact that the diagnostic procedure at that level does not imply any risk for the patient; therefore, the following question arises: what is the need to request the informed consent of the persons sent to the medical services of the agencies of the Public Ministry?

The forensic doctor will conclude his medical act with the description of the findings and his opinion in the certificate-opinion that integrates and delivers to the authority, which will have legal effects, since that will be one of the test data that will contribute to the agent of the Public Ministry can base its accusation. For this reason, it is necessary for the forensic expert to carry out the expert examination

to all those individuals involved in legal problems without requesting informed consent, doing so in an ethical and professional manner so that it takes effect before the Courts of Justice, in front of which will publicly defend the conclusions reached.

In the medical-forensic field a doctor-patient relationship does not occur as it happens in the medical-clinical field, a fact that is necessary and important for obtaining an informed consent.

THE PERSON PRESENTED IS NOT A PATIENT

The word *patient* comes from the Latin *patiens* which means: "to suffer", that is, the patient is an adjective that refers to who has patience (the ability to endure or suffer something, to do minute things or to know how to wait)¹⁰ In sociological and administrative terms, the patient is the subject who receives the services of a doctor or other health professional and undergoes an examination, treatment or intervention.

Regarding informed consent in the forensic medical field we have to speak of "Person Submitted" and not "patient" as it is taken at the request of the competent authority before the Medical Service for the practice of the necessary examinations.

THERE IS NO PHYSICIAN-PATIENT RELATIONSHIP

The evolution of the doctor-patient relationship has turned it into a legal act; At present, there is a medical-juridical nexus and paternalism has been left aside and with it it has been transformed into a relationship based on information and the patient's autonomous consent to decide on their health¹¹.

In the medical-care field a dialogue is created between doctor and patient since due to the information and the degree of illness that the person has this relationship takes a rhythm; the consent is free, informed and without coercion; This relationship does not exist in criminal matters, in which the relationship between the doctor and the person presented is simply legal; there will always be information regarding the medical procedures to which the individual will submit, in order not to violate their rights, but we can not affirm that it is a doctor-patient relationship.

In addition, in clinical practice there is acceptance by the person to be diagnosed by the doctor assigned by the health institution or the one he chooses, providing all the real and truthful information without deception; it is a different situation from that of individuals who are expertly examined by the forensic doctor, where symptoms are continually simulated, invented, imitated or exaggerated, and even injuries are caused, with the purpose of deceiving the doctor to obtain a legal benefit of illegal way, which complicates the expert work.

The first important issue is the ultimate goal of the doctor-patient relationship, which is to achieve or improve the health of the person; In the case of an expert assessment, it is not going to be the benefit of your health, but the possible legal consequences that may arise. The individual who is going to undergo the forensic medical examination must be thoroughly informed of the manner in which the procedure will be carried out, the purpose of the expert examination, as well as the authority or party requesting it, in order that can decide autonomously and freely about his

willingness to answer the medical questioning and to be recognized according to his interests; You have every right to refuse to be made and to keep that right at all times, but not requesting your authorization as it is done with informed consent, because it would put in their hands the decision of the execution of a legal act; This is absurd since the law must be complied with and not left to the discretion of the people who are involved in a legal conflict.

The act that the Forensic Physician exercises in his professional performance is a person-expert meeting; this circumstance can significantly condition the empathy or antipathy that can undoubtedly affect the explorer provides the data to comply with the end of recognition; consequently, the person-expert encounter, can not be understood as a doctor-patient relationship as such, because of the special circumstances that come together in it (the person does not appear before the expert for the treatment of a disease, is not there because of his will and, sometimes, he does not know why he has to be evaluated by the doctor); Other aspects that must be taken into account are: the place (agency of the Public Ministry, court, prison, hospital, etc.) and the period in which the meeting is established; all these factors are generally far from being appropriate for a harmony that allows the behavior and attitude of the person towards the doctor are adequate and the level of confidence and acceptance with ability (knowledge of the implications, nature and consequences) of the procedure to perform, a situation that can only be achieved in a doctor-patient relationship⁸.

In this regard, Kvitko¹² states that *"informed consent is originated and applied in every medical care act, this is of inescapable observation in the doctor-*

patient relationship. In practice, the expert does not perform any kind of medical assistance, does not work with, or faces a patient, but a totally different person, which turns out to be the person to be examined. In the expert act, the expert does not integrate a symmetric relationship, which is or should be the doctor-patient relationship, but establishes an asymmetric relationship, expert-person to be evaluated. Except for extraordinary opportunities, the expert work is established without the subject of the expert opinion being able, at all, to choose or arrange who will be the expert that will evaluate it. To finalize and our criterion, the expert task is completely different to the medical care work, takes place in a completely different field, originates and has as its objective causes and reasons that do not support a symmetrical relationship and are carried out according to principles, criteria and totally dissimilar procedures regarding the actions implemented in healthcare practice. Therefore, the informed consent that unrestrictedly must respect any medical care can not be applied as such in the expert activity"

IN WHICH CASE INFORMED CONSENT IN CRIMINAL MATTER WOULD BE AFFECTED?

The medical-forensic examination must be carried out without the need to carry out the process of informed consent in the interest of society. In a person arrested for the commission of an illicit act, the medical examination will serve to provide evidence binding the criminal act, so that the examination can be done without their consent at the request of the Public Ministry Agent in accordance with the provisions of the National Code of Criminal Procedures, in its article 131 fractions VII (order the Police and their

assistants, in the scope of their competence, the practice of investigative acts conducive to the clarification of the criminal act) and IX (request the practice of expertise and procedures for obtaining other means of proof). This is due to the fact that the medical examination forms an integral part of the investigation process and constitutes an important part in the constitution of the crime.

Given the importance of the victim of the crime having an appropriate defense with a due process and respecting all the rules, the informed consent in the case should not exist, since the persecuting authority (Public Ministry) has the obligation to collect the necessary tests, always in accordance with the laws in force; there would be no violation of the rights of the accused, since he will be informed as soon as he is presented before the authority the reason for his presentation and the procedure to be followed as established in article 20 of the Constitution; in this case, the authority must establish and motivate the reason for the medical examination, which leads us to conclude that due to its importance it must be carried out for the integration of the crime, without the consent of the person responsible; from that examination, there could be indications that make the individual link with the crime; If in this case the medical examination will not be carried out, there would be no test data and then there would not be sufficient elements to be able to integrate the Research Folder.

If informed consent is requested from a person who is intoxicated and also injured, it is obvious that they can not subscribe to an informed consent, a situation that causes the physical examination to be impossible and that if it is necessary to assess and treat them in the hospital, this is delayed until the recovery

from poisoning, which can cause their health condition to worsen.

FUNDAMENTAL RIGHTS

In the opinion of Luigi Ferragoli, fundamental rights are all those subjective rights that universally correspond to "all" human beings as endowed with the status of persons, citizens or persons with the capacity to act¹³.

The quality of people with capacity to act is generated only by negative route; as a general rule the Constitution must start from the premise that all people, by the mere fact of being so, have the necessary capacity to be holders of fundamental rights and to exercise them for themselves, but the same law restricts the ability to be holder of some rights or the ability of a person to exercise them. People have the right to be informed about the forensic examination and to decide about it; in case of not having the capacity to act, that right must be exercised by whoever holds the custody, guardianship or legal representation as the case may be. It is common that the person who must be examined by the Medical Examiner, may or may not know the reason for this procedure and, therefore, does not know the purpose of this medical-expert act. For this reason, in the medical care provided by the Forensic Doctor, ethically and morally, it is obliged to inform the people, why, for what and how the psychophysical exploration and the results are going to be carried out. The Medical Examiner must treat with respect the people who by Law must undergo the Medical examination; It must not be forgotten that human dignity is immanent (it is by nature united to the human being and remains in him); the victim or the alleged victimizer does not lose their dignity, not even the corpse, so they should not be treated differently by

the legal definition (whistleblower or presumed responsible) attributed to him by the Public Prosecutor in his request for examination.

Thus, for the clinician the ethical-deontological (should be and should be) and moral situation is solved by benefiting the patient, respecting their dignity, relating adequately with the patient and respecting their autonomy, more in those procedures in which they are required. Decision for a diagnosis or treatment, requesting informed consent and applying scientific advances that improve your health status. On the other hand, the forensic medical expert solves the ethical issues by treating with respect the people who are examined by him, explaining what the examination consists of, trying that a person of his trust or his lawyer is with them in the medical area and if that is not possible, that someone who works in the Public Ministry agency and is of the same sex is present.

With all the aforementioned it is possible to establish that without the informed consent of the person, their human rights are not violated nor are they affected by the ethical principles with which the medical expert must act when performing their work, because this has already been previously informed in what way and its decision will always prevail and its decision will be respected if it does not allow or does not authorize the examination. If the forensic doctor explains to a person presented, as presumed responsible for a criminal act, what the medical examination consists of and asks for his authorization to examine it; this person will know the risks that the procedure implies for her; the most convenient for their interests will be to refuse to accept the exam, which will prevent the expert from obtaining the

necessary evidence for the authority to determine that it is a crime and therefore substantiate his accusation, leading to impunity.

DAMAGE TO SOCIAL INTEREST

The social interest is the set of claims related to the collective needs of the members of a community and protected through the direct and permanent intervention of the State. It is everything that tends to the benefit and development of the community; given the importance of it, it is clear that the criminal process does not have to transgress that interest but quite the opposite, to protect it.

It is the protection of the rights of the community and we can not superimpose an individual right to the social interest. It has become clear that in criminal matters we can not speak of an informed consent in the same way as in the medical-clinical field since, in criminal matters, what is sought is to guarantee the social interest, that is, that the crime be prosecuted respecting the rights granted by the Constitution, both to the victim and the accused; if the person responsible does not authorize the informed consent procedure, we would be placing an individual interest above the social interest; this affectation would leave the crime victim defenseless and the purpose of the criminal process, which is that of social defense against crime, would not be fulfilled. Applying informed consent to a probable perpetrator would be affecting the social interest to justice, which would have supremacy over the individual right to refuse medical-forensic examination.

In the case of the medical examination, it can be affirmed that when the protection of an individual right (the

right to object to it) entails a serious risk to a social interest of a higher nature such as the right to life, health and justice, that denial is not justifiable; As the medical-forensic examination is a harmless procedure, informed consent is not necessary for its realization. In addition, compliance with the provisions of Article 269 of the National Code of Criminal Procedures, which establishes that "*during the investigation, the Police or, where appropriate, the Public Ministry, may request any person to voluntarily provide samples of body fluid, hair or hair, body biological examinations, extractions of blood or other similar, as well as being allowed to obtain internal or external images of any part of the body, provided that it does not involve risks to the health and dignity of the body*".

Similarly, it would oppose what is stipulated in article 270 of the same Code, which states that "*if the person to whom the voluntary contribution of the samples referred to in the previous article was requested to refuse to do so, the Public Prosecutor's Office Yes or at the request of the Police may request the judicial body, by any means, the immediate authorization of the practice of said act of investigation, justifying the need for the measure and expressing the person or persons in whom it is to be practiced, the type and extent of sample or image to obtain*".

CONCLUSION

We can conclude that informed consent is undoubtedly an important part in the rights of a person in the medical-clinical field. However, it has been made clear that informed consent can not and should not be imposed in the medical-forensic field to all persons who are presented or sent to the doctor of the

Public Ministry agency; the forensic doctor, fulfilling the ethical and professional duties of informing about who he is, to which institution he belongs, what is his function within the agency, how is the medical examination carried out and what the objectives of that, will ethically fulfill its mission and will not violate the Human Rights of the people.

The informed consent in the Medical-forensic area affects the administration and administration of justice when the certification procedure (physical examination) is not accepted by the accused, by interfering in obtaining the test data, which are the certificates-opinions provided by the medical expert, so that the agent of the Public Prosecutor's Office can determine if the fact that is being investigated is a crime and the probable participation of the suspect in his commission, that the Control Judge can link the detainee to the process, or the Judge of Oral Trial can integrate the body of the crime to dictate sentence.

Therefore, if informed consent was imposed in the medical-forensic environment, impunity would be favored, the victim would be left defenseless and an individual right over a collective right would be weighted that would affect justice and, therefore, to society.

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