The Success of the Informed Consent in the Context of the Negotiations

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Abstract: The purpose of the paper is to highlight the utmost importance of informed consent in the context of business negotiations. Informed consent is a new topic in business, imposed by globalization that began in the 1990s. Informed consent is found in all spheres of economy and public life. Informed consent is important in the field of medicine to obtain the patient's approval for a procedure that affects his life. For the client of the bank, this means getting to know all the conditions for raising a loan or depositing funds before the client signs the contract.

Informed consent is giving consent to use the mobile operator's services most conveniently and acceptably for the client. In the field of tourism, this type of consent means the willingness to sign a contract on the consumption of proposed tourist services before their implementation. In all of the above situations, informed consent means that one party enters into a negotiation relationship with another, verbally or in writing, and gives permission to the other to use their data to obtain a certain type of service, in exchange for which the service provider undertakes to comply with certain ethical principles concerning the client or recipient and respect for his identity, without the right to export information.

The paper discusses the key components in the negotiation process, on which the effective finalization of the set goal depends, namely discussion, conflict, communication techniques as the main element in negotiations, the influence of the physical space, compliance with ethical principles and respect for multiculturalism.

1. INTRODUCTION

Informed consent originates in medicine and means a principle in medical ethics and medical law and media studies that a patient must have sufficient information and understanding before deciding on their medical care. Relevant information may include risks and benefits of treatment, alternative treatments, the patient's role in treatment and the patient's right to refuse treatment. In most systems, healthcare providers have a legal and ethical responsibility to ensure that the patient's consent is informed. This principle applies more broadly than healthcare intervention, for example, to conduct research and to disclose an individual's medical information. In medical or official circumstances, express consent by signature – usually relied upon as legal – regardless of actual consent is the norm. This is the case with certain procedures, such as a do-not-resuscitate directive that the patient signed before the onset of their illness (Woodruff, 1989).

The term informed consent has evolved in a historical and social context beyond ethical compliance laws. In the context of business communication, it means understanding and evaluating information about various risks and probabilities. The purpose of this research is to explain the role of informed consent in the field of business negotiations, which would not be possible without conditions of mutual consent.

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2. INFORMED CONSENT

According to Lindsley (2019), properly executed informed consent (IC) is a continuous process, not a single event. "Process" includes ongoing, interactive discussions that provide volunteers with information sufficient to support and sustain informed decision-making and contains some required elements including the purpose of the study, risks, benefits, all procedures, costs, compensation, volunteering, withdrawal, and confidentiality.

Barrios (2009) states that informed consent is a process, not just a format, that consists of the express manifestation of a competent person (whose physical, mental and moral capacity allows him to make a decision) to participate in an investigation, in such conditions that can know the risks, benefits, consequences or problems that may arise during the development of the research. Informed consent means the act or effect of consent.

According to Gonzalez (2014), informed consent is a process that involves providing important information that has been given or received from another party. This means obtaining any information that could influence decision-making.

Informed consent can be complex to assess because neither expressions of consent nor expressions of understanding of the implications necessarily mean that the adult's full consent has been given, nor that full understanding of the relevant issues has been internalized (Murray, 2012).

For informed consent to exist, the following criteria must be met:
- There should be a principle of autonomy or freedom of decision-making;
- It is necessary to explain in detail and have the necessary competencies to make a decision.

Informed consent can be written, oral, or implied Gonzalez (2014). Consent may be implied within the normal subtleties of human communication rather than expressly agreed upon orally or in writing. In some cases, consent may not be legally possible, even if the person objects, really understands, and wants to. There are also structured instruments for assessing the capacity to give informed consent, although there is currently no ideal instrument.

For an individual to give valid informed consent, three components must be present: disclosure, capacity and voluntariness (Faden et al., 1986).
- Disclosure requires that the researcher provide each potential subject with the information necessary to make an autonomous decision, as well as ensure that the subject adequately understands the information provided. The last condition implies that the written consent form must be written in layman's language that corresponds to the subject's ability to understand, as well as an assessment of the level of understanding through conversation (being informed).
- The capacity refers to the subject's ability to both understand the information provided and form a sound judgment based on the potential consequences of his/her decision.
- Voluntariness refers to the subject's right to freely exercise his or her own decision without being subjected to external pressure such as coercion, manipulation, or undue influence.

Informed consent is a technical term first used by attorney Paul G. Gebhardt in a US medical malpractice lawsuit in 1957 (Pace, 1997). While different cultures in different places practice informed consent, the modern concept of informed consent was developed by people who drew influence from the Western tradition (Faden et al., 1986). The Western tradition is based on ethics and ethical principles.
Informed consent is a psychological process that respects the principle of the patient's autonomy, and thus his dignity. In the field of business, it is about respecting the dignity of negotiating partners by negotiators. He is obliged to evaluate the participants in the negotiations and their preferences. For this purpose, the presence of the already mentioned three components that would be effective for informed consent is necessary, and to them, we must also add the fourth - understanding, which is crucial for the final negotiations:

- Voluntariness – achieving the goal without external pressure, the partner must have time to think, consult, or make a decision.
- Capacity – the person must have the opportunity and be able to make a decision.
- Information – the user must have enough information to be able to make an efficient and informed decision.
- Understanding – to make sure that the other party has understood the given information.

Information related to the documentation or the agenda of the negotiations can be given in written or verbal form, with the aim that the person receiving the communication is fully informed. Only then will the negotiation process be fully approved or concluded by signing the consent documents. Signing means understanding everything that is being communicated.

Therefore, we can say that the process of informed consent is fundamental from a psychological point of view. It is a basic communication mechanism, the failure of which can become the basis for psychological negligence.

The concept of the importance of partner consent lies in the proper conduct of the business relationship. But it is of utmost importance when concluding a contract, in the context of business negotiations. If one party is not fully informed or all information is not disclosed, i.e. to play with open cards, the uninformed party at the end of the negotiation can refuse to enter into a contract or sign the contract without reading the fine print.

3. NEGOTIATIONS

Negotiations are an element of the organizational behavior of the company. Negotiations are the basis of communication in business and aim only to reach an agreement. Consent is reached when you are informed of the terms of the negotiations.

Negotiations are the process of bringing the views of the parties together under the most favorable conditions. To reach an agreement in negotiations, both parties must be in a position and willing to change the original terms. This means that they must always have at least one alternative proposal. Negotiations are conducted only if the interests of both parties coincide to a greater or lesser extent, i.e. the opponent is interested in your proposal (Arte-Rem, n.d.). The process of negotiation necessarily passes through several stages - goal setting, information provision, practical development of the strategy, determination of tactics, identification and selection of techniques, and identification of skills, therefore, informed consent is an indispensable part of the second stage, namely information provision. In other words, informed consent occurs when there is consent to an interaction or an action performed with knowledge or relevant facts such as the risks involved or any available alternatives.

In order to analyze the essence of informed consent in the negotiation process, its components must be highlighted. First of all, one must know whether there is equality between the two
sides. If they are not equal, it means that one of the parties is harmed. A judgment is required as to whether there are objective possibilities for achieving equality. For this purpose, each party must know the other, especially to know the specific characteristics of their partner and the following:

- Cultural characteristics;
- Financial and economic status of the other party;
- Mentality - national characteristics;
- Political situation in the partner country;
- Social-economic characteristics: demographic specifics - history, lifestyle, etc.

Failure to achieve equality means that the weaker do not accept the arguments of the stronger and cannot assess the degree of loss, when it is greater, in realized or unrealized negotiations.

Negotiations can proceed differently with partners from different countries, given that there is a clash of cultures and nationalities. For example, in negotiations with partners from Serbia, North Macedonia and Albania, the chance for equality is greater for Serbia, considering the country's geographical position and size, as well as the country's socio-economic development. The basis is always socio-economic, but we should not ignore the fact that in the Balkans people are more emotional, even though they are all three Balkan countries, and emotion is the opposite of balance and tolerance.

Before the start of negotiations, each party must be thoroughly informed about the other, which means recognizing and considering all the possibilities, possible risks and benefits associated with the degree of success or failure of each detail of the negotiations, to achieve a positive outcome. In this case, we are talking about building trust in the seller-buyer or buyer-supplier relationship. To build trust, certain rights and ethical norms regarding informed consent must be respected.

Deliberately hiding information about the state of one of the parties can lead to a loss of trust in the other party, which can cause dissatisfaction, mild aggression, or refusal to continue negotiations. Lack of informed consent means negligent treatment of the other party, inappropriate behavior, or disrespect. In other words, there is a lack of respect for the principles of conducting negotiations. Lack of informed consent can lead to confusion on the part of the partner and making the wrong decision, which, in turn, can lead to dissatisfaction in achieving the desired goal. Therefore, during the discussion, both parties must present a realistic picture of the state of the companies they lead. Discussion is a type of communication, and informed consent is essentially communication. The head of the company can be an exceptional professional, but whether he will achieve the desired goal during negotiations and whether the partner will be satisfied with his negotiation skills depends on his communication skills. Active listening and the ability to present the agenda and requests in a way that reaches the partner is of utmost importance. This means that there is no room for speaking too fast, too high, or too low. All of these can mislead the receiver, destroying the quality of the message the sender is sending. It is preferable not to use negation in oral communication, denying the point of view of the other party, but to focus attention on the thesis of the other party. A moderate tone and the speaker's body language during the consent discussion are very important. Failure to follow these techniques can become a source of anxiety, discomfort, or confusion.

An informed consent discussion should be a reason to get the necessary information for possible options to decide to buy or sell. For this purpose, the partner must be presented with a complete and realistic
picture of the company's financial condition and image. In the process of work, the contracting party may discover valuable and useful information and possibly worries caused by useless information. The transfer of information from the provider/buyer or seller/ and vice versa are key actions in the process of informed consent. Only with clear messages can feedback be obtained, which will become a guarantee for the continuation of negotiations in conditions of a calm atmosphere, comfort, and a successful result. In conclusion, we can say that discussions about informed consent are a two-way street (Dentalcorp, 2022). Informed consent indicates and confirms adequate negotiation.

Informed consent is written consent given after receiving information, but may mean tacit or verbal consent. Tacit consent can be implied consent through a certain act or behavior, without verbal communication. Giving written or oral informed consent implies a detailed introduction in advance to the situation of the competing company and all its requirements that will be in the negotiation process. Most often, these details refer to the subject of negotiations, ways to achieve the goal, possible duration, agenda, possible risks when agreeing on prices, consequences, expected benefit, confirmation of the final result - whether the goal has been achieved, and general forecasts for the joint activity.

At a certain stage of negotiations, relations may become strained, and then a compromise is necessary. Compromise is the concept of finding an agreement by mutually accepting terms or deviating from the original goal (Alegsa, n.d.). It should be considered whether a compromise is possible. Compromising means equalizing partners. Because compromise means that one side either got too little or too much, but the other side agreed. Failure to reach a compromise means that the negotiators did not realize their interests. Negotiations are the way from desired to possible.

Why do some negotiations fail or do the parties fail to achieve their goal? The work of both parties should focus mainly on the behavior and activities of the organization entering into the negotiating relationship, the resources they will use, and efforts to avoid possible conflicts. There is no exact model for conducting and achieving negotiations. But there is an opportunity to follow certain rules to reach an agreement. Lack of agreement inevitably leads to conflict. Consent is a signal of long-term fruitful intentions. Consent is a key bargaining chip (Yuen, 2014) and serves as a key to the appearance of mutual interest with the intention of further engagement.

Compromise means avoiding conflict where both sides lose, so it is important to achieve cooperation. Cooperation also implies achieving a balanced scope, open communication, and mutual understanding. Competitive relationships, where a clear lack of cooperation is evident, require a compromise decision. Compromise, on the other hand, is a sign of weakness and instability of the partner and an unfavorable situation. Compromise means finding a solution in a peaceful environment (Fartice, n.d.). The key to understanding and achieving cooperation is precisely communication. Differences can only be overcome through communication because each country has its model and worldview.

The success of any entrepreneur or manager can be determined by his ability to communicate. The manner and ability to communicate have nothing to do with professionalism. In managing a company, a manager must be able to negotiate, present ideas, make the right decisions, motivate staff, and overcome weaknesses in the company.

Inability to communicate with customers, improperly built interpersonal relationships, and inappropriate behavior during negotiations, can lead to the loss of the opportunity to win new
customers and new markets. All these skills are essential for communication in its various forms. For this purpose, the manager must find an appropriate approach to communication within the company and outside it with existing and potential partners to overcome possible difficulties.

Basic knowledge of communication through the rules of oral and written communication is required. The manager himself must:
- to be an example of mastered effective communication;
- to build communication skills in a conflict situation;
- to require staff and subordinates to regulate their behavior and control their emotions or regulate the level of emotional intelligence.

Communication in business is interpersonal, group, public, mass. A manager needs to be able to apply internal-organizational and external communication techniques.

Knowing and possessing cultural competence is of great importance for conducting negotiations. Negotiations are conducted between partner countries - representatives of different cultures and with different characteristics. For negotiations to begin, a leader must be able to develop communication skills with different ethnic groups and speakers of other cultures. Knowing a foreign culture means being able to understand a foreign message. It is the key to effective negotiation, employee motivation, continuous employee training, and team-building ability. First of all, it is necessary to know the cultural differences of the partner country or region and understand the role of cultural diversity. Ignorance of foreign cultures and national differences risks breaking trust caused by misunderstanding. Knowing the main cultural specifics of verbal and non-verbal behavior is of great importance.

For negotiations to be conducted successfully, it is first of all important to pay attention to the correct choice of workplace or space. Create conditions for the other party to feel an atmosphere of calm communication, conversation and comfort. A well-maintained workplace can boost productivity and create the conditions for growth. The choice of the room and the color range of the interior are important, which can affect emotions positively or negatively if the color tones are chosen incorrectly. In addition, the arrangement of furniture, the choice of position around the negotiation table, and the air temperature are also necessary conditions for harmonizing the sociocultural profile of the other party. Of great importance is the spatial or physical location of people and objects involved in negotiations, which are a factor in achieving the desired result.

Achieving the desired appearance of the space can influence the management of the dynamics during negotiations.

Every leader needs to be prepared for defeat, to have a competent reaction, to be able to minimize the negative consequences and to avoid a destructive effect on the staff. Must have skills to recognize emotional reactions and look for ways to take effective action.

Last but not least, the atmosphere during the negotiations is extremely important. It should be calm, dispositional, and stress-free. This means that the manager or negotiator must have skills to manage or eliminate stress. People react differently in stressful situations, excessive stress affects them differently.

All of the above-mentioned components can prove to be key to the effectiveness of the negotiation process.
Uninformed consent is tacit consent, which in some cases means compromise. Compromise in negotiations means the victory of the rational over the emotional for the sake of ultimate success.

The main conclusion as a result of the above is that achieving optimal communication means:
- Transparency in relations - that there are no secrets between the parties, that they are prepared to ask and answer questions.
- Open agenda.
- The feeling of clarity about equality.

4. CONCLUSION

In order for the negotiating parties to present their maximum potential in negotiations, they must have accurate information from each other to make informed decisions. So what is needed, is transparency from both sides in terms of information. Both parties should make varying but determined efforts to provide appropriate information about themselves if such information may be requested. Informed consent implies respect for ethical principles and setting guidelines for good professional behavior in the negotiation process. It creates trust between negotiation partners and improves communication between them, which reduces the risk of negotiation failure and motivates them to make the right decision.

References
