

Informed consent

By Bill Schmalz, FAIA

Two principles form the bedrock of professional ethics: (1) acting in the client's best interests, and (2) ensuring that clients make decisions while understanding the risks inherent in those decisions. Professionals—including physicians, lawyers, psychologists, and accountants—are able to satisfy both principles by using *informed consent*.

To see informed consent in action, let's use physicians as an example. When a physician discovers her client has a condition that requires surgery, it's not her place as a professional to order him to have the surgery. The decision whether or not to have surgery must be made by the client, since it is his life that is potentially at risk. The physician's responsibility is to advise her client that without the surgery his condition is unlikely to improve and may become life-threatening, and to inform him of the potential risks of the surgery itself.

Thus informed, the client can make a decision that will, one way or another, affect his life. The physician will make sure that all this information is in writing and signed by the client. If the client decides to proceed with the surgery, and it doesn't go well, he can't claim to have not known the risks involved. Informed consent not only allows the physician to act in the client's interest and to make the client aware of the risks, but also satisfies a third bedrock principle of professionals: Don't take on unnecessary (and unpaid-for) risk.

Architects also use informed consent, although we often don't think of it as such. Even so, informed consent allows architects to act professionally while minimizing risks. Let's consider a few examples.

Example 1:

The client has given you (the architect) a site survey. You've been told the surveyor used every means, short of ground-penetrating radar, to locate underground utilities. In one area of the site, which will be dense with new utilities, you're concerned that unforeseen existing underground utilities may be in the way of the new utilities, even though no such existing utilities are on the survey. You choose to:

- (a) design the new utilities as though the survey shows all existing utilities,
- (b) order the surveyor to use ground-penetrating radar in the area of the new utilities to make sure there are no conflicting existing utilities, or
- (c) alert the client of your concerns, in writing, explaining the potential costs of using ground-penetrating radar now or finding unforeseen buried utilities later.

Example 2:

You (the architect) are designing a new building with a tight construction budget. The geotechnical report tells you that the water table maybe high enough to potentially affect the basement during exceptionally wet seasons. You choose to:

- (a) specify the cheapest waterproofing available, since even in wet seasons, the water will probably be below the basement slab;
- (b) specify the most elaborate (and costly) belt-and-suspenders waterproofing system you can find; or
- (c) alert the client, in writing, of your concerns about the water table, and present the certain costs of the high-end waterproofing system with the potential, if unlikely, costs should water get into the basement.

Example 3:

You (the architect) are designing a five-story headquarters building. The client has asked that you design a rooftop patio that will be sparsely occupied most of the time, but on occasion will be used for corporate parties. The client then directs you to label the patio as “unoccupied” to avoid triggering costly assembly-occupancy exiting requirements. You choose to:

- (a) do as the client directed,
- (b) ignore the client’s direction and design the patio and the exits for assembly occupancies, or
- (c) alert the client, in writing, of the potential risks and costs if the authorities having jurisdiction, either during plan check or final inspection, require that the patio be labeled as an assembly space.

Answers:

Did you pick (c) for each of the above scenarios? Sorry, you don’t go to the final round. Answer (c) is correct for Examples 1 and 2; in each case, you have told your clients of the potential risks and costs involved in making a decision, allowing them to make informed decisions on how to spend their money. The well-informed clients can then decide whether to use ground-penetrating radar or not, or to use cheap or expensive waterproofing. In other words, *they* get to decide how to spend *their* money, while understanding the consequences of *their* decisions.

Example 3 differs from the first two in that it involves a life-safety decision, which is not the client’s to make; it’s yours, as a licensed professional. The correct answer is (d) tell the client, in writing, that the patio must designed either for building maintenance only or as an assembly space. This gives the client the information to decide whether to forego the rooftop parties or pay the costs for making the patio an assembly space.

These architectural examples of informed consent show how architects can give their clients the information needed to make informed decisions that will affect the clients' money and their buildings' performance, while ensuring that the clients understand and bear the risks involved in those decisions.

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