

Consent: Assisting patients to make well-informed decisions

Information Sheet No: I002 [2007]

Issue date: July 2007

Next review date: July 2010

This document is based on advice obtained by the Dental Practice Board of Victoria in June 2003. It is provided for the information of practitioners, but is not a substitute for legal advice specific to your particular circumstances.

General

1. A practitioner must help patients to make well-informed decisions about their treatment. This is part of the practitioner's overall duty to take reasonable care in looking after a patient.
2. The law requires that the patient not only agrees with the proposed treatment, but also that he or she is given adequate information before treatment is commenced.
3. A practitioner should keep the patient informed of:
 - the nature of any proposed diagnostic procedures or treatment;
 - any side-effects, risks or possible complications;
 - the probable cost of treatment and the time it is likely to take;
 - the expected longevity of the treatment and any maintenance requirements; and
 - alternatives to the proposed treatment.
4. The practitioner should:
 - use words that the patient can understand;
 - allow the patient to ask questions;
 - repeat information if necessary;
 - give the patient time to make a decision without any sense of pressure; and
 - use a competent interpreter if the patient does not speak English.

Risks

5. Risks should be disclosed when an adverse outcome:
 - is common, even though the detriment is slight; or
 - is severe, even though its occurrence is rare.
6. In general, the practitioner has the duty to warn a patient of any material risks of the proposed treatment. A risk is material if, in the circumstances:
 - a reasonable person in the patient's position, if warned of the risk, would be likely to attach significance to it; or
 - the practitioner is or should reasonably be aware that the particular patient, if warned of the risk, would be likely to attach significance to it.
7. Accordingly, the duty to provide information and advice will depend upon:
 - the nature of the treatment;
 - the probability of adverse effects; and
 - the temperament, personality and understanding of the patient.

Exceptions

8. There are two main exceptions to the practitioner's duty to provide information, as follows:
 - the rule of "*therapeutic privilege*" permits the practitioner to withhold information in very limited circumstances if that information, in the practitioner's reasonable judgement, would seriously harm the patient's health or welfare; and
 - emergency treatment, to the extent that it is reasonably required, where the patient is temporarily unable to consent.
9. Note, though, that the first of these applies only rarely and to exceptional cases, and does not apply merely because the patient does not agree with the course of treatment proposed by the practitioner.

Form of consent

10. Consent may be either oral or in writing, or may be implied from the circumstances.

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11. Consent for routine examination is normally implied.
12. For routine procedures, written consent is not generally necessary.
13. In the case of more complex or risky procedures, or surgery, the practitioner should obtain written consent. The fact that a patient signs a consent form, however, is not in itself consent, only evidence of consent. It does not alter the practitioner's duty to provide full and proper information and advice.
14. The practitioner should make and keep a detailed record that the procedure has been explained and that the patient has consented.

Capacity

15. Competent adults are entitled to refuse any medical or similar procedures which they do not want. Such decisions must be respected and followed.
16. A patient may retract consent at any time before treatment is given.
17. In the short term, acute mental illness, drugs or alcohol may render a patient incapable of consent.
18. Senile, intellectually disabled or mentally ill patients may lack the capacity to consent.
19. An adult patient may appoint an agent to make treatment decisions, including the refusal of treatment, against the possibility that the patient might become incompetent.
20. A guardian may make treatment decisions for a person subject to a guardianship order, except for certain major procedures.
21. A child under the age of 18 years can consent to any medical or similar procedures if he or she has sufficient intelligence and maturity to understand the nature and consequences of the treatment.
22. If a child refuses treatment, a parent may only consent on the child's behalf if the child lacks the capacity to consent. It may, however, be beyond the power of a parent to consent to major, irreversible treatment and the intervention of the courts might be necessary.

Advice

23. If in doubt, in a particular case, a practitioner should seek legal advice before proceeding.