



C-Gen 2

Guidelines for consent and the provision of information regarding proposed treatment

The purpose of these guidelines is to assist doctors to understand some clinical applications of the law in the area of consent and the duty to inform. A patient's consent must be obtained before conducting an examination or commencing treatment. It is preferable that there be joint decision-making, as the patient may not have sufficient understanding of the complex information to make the decision in isolation. Doctors should encourage their patients to raise questions and concerns. To obtain consent and satisfy the duty to inform, a doctor must ensure that the patient is competent, understands what is being proposed and that the information provided to the patient is accurate and relevant to the patient.

Consent

A patient who is not legally competent cannot give a valid consent. The more obvious categories of incompetent patient are children, intellectually disabled and unconscious patients. The laws of the relevant Country, State or Territory must be observed, so Fellows are advised to seek information about the laws which apply in their State or jurisdiction in addition to the information provided in this statement.

Children can consent to most treatment provided the doctor is satisfied that they have the ability to understand the nature of treatment, the consequences and risks of treatment. A doctor should whenever possible, seek the consent of a parent or guardian when any major intervention is proposed. In difficult cases, the doctor should obtain a second opinion. There are specific statutory requirements in some jurisdictions relating to consent to treatment and refusal of treatment. Doctors must be aware of the relevant requirements in their jurisdiction.

Doctors must assess the competence of each patient. If a patient is not competent to consent to treatment, the consent of a guardian, person who holds the power of attorney and sometimes a court must be obtained before the examination or treatment can proceed. If the doctor is not satisfied that a patient is competent to consent to treatment, the doctor should seek a second opinion.

In the case of an unconscious patients or an emergency situation when urgent treatment is needed to save life or avoid serious harm, it is recognised that full information cannot be provided to the patient and that it may not be possible to obtain consent. It is wise to consult relatives (if possible), but the doctor must act always in the best interests of the patient.

Duty to Inform

The purpose of providing information is to allow the patient to make an informed decision about proposed treatment, the degree of invasiveness and the likely benefits and risks associated with the treatment. The information provided will depend on the doctor's assessment of what information is relevant to the treatment and material to the particular patient.

The patient should be provided with all relevant information which is necessary to allow the patient to make an informed decision about treatment. The doctor has a duty to inform the patient of all "material risks" associated with a treatment or procedure.

According to a majority decision of the High Court of Australia,

"a risk is material if, in the circumstances of the particular case, a reasonable person in the patient's position, if warned of the risk, would be likely to attach significance to it or if the medical practitioner is or should reasonably be aware that the particular patient, if warned of the risk, would be likely to attach significance to it."

The more elective the procedure, the greater the need for disclosure of risks.

Clear and precise literature or other audiovisual information regarding a treatment should be provided to a patient wherever possible. Written or audiovisual information should be used as an adjunct to verbal communication. Information should be provided in a timely manner and further discussion with other people should be encouraged.

Written or audiovisual information should never be used or relied on as a substitute for verbal communication with the patient.

When the patient's first language is not English, the medical practitioner must assess whether the patient has a sufficient understanding of the information provided to consent to treatment (taking into consideration the complexity of the issues and the patient's proficiency in English). If an interpreter is required, it is highly desirable that a professionally qualified health interpreter assist either in person or by telephone*. If a professionally qualified interpreter is not available or is not acceptable to the patient, assistance may be sought from family members or bilingual staff. (See footnote * below)

The minimum information that should be provided to a competent patient includes, (but is not limited to):

- The nature of the treatment, including investigations
- The effect of the treatment, including side effects
- Other treatment options
- The likely short and long term outcomes
- Risks associated with the treatment, particularly risks which are potentially serious and which may influence the patient's decision regarding treatment
- The timeframe for treatment and recovery
- Whether the treating doctor will be other than the doctor providing the information
- The level of training of the doctor involved in the treatment
- The likely cost of the treatment
- The consequences and risks of not undergoing the proposed treatment.

Doctors have a duty to answer all patients' requests for information.

Where a Fellow is acting as a visiting surgeon for a demonstration/teaching session for peers at a hospital, the visiting surgeon must still undertake a consultation covering the nature and teaching format for the surgery, and obtain written consent from the patient for the procedure. This is necessary even if the patient's treating specialist has already undertaken a consultation and obtained consent (as the treating specialist may not have been in a position to give full details of the demonstration surgery and possible complications).

A consultant is responsible for care delegated to trainees under his or her supervision and must therefore be satisfied that trainees are trained to inform patients and obtain consent.

There are some occasions when a patient indicates that he or she does not wish to be fully informed about a proposed treatment. While the doctor is not required to burden a patient with

unwanted information, the doctor must explain the procedure (at least in broad terms), the alternatives to the treatment, the likelihood of a satisfactory outcome and the more serious and common side effects or complications.

Information should not be withheld from a patient unless the doctor believes that the patient's physical or mental health could be seriously harmed by the information.

Doctors should make clear contemporaneous notes of the advice and information they have given to the patient, including the specific risks that have been discussed and the provision of information or literature.

Reference of the advice given may be made in the letter to the referring doctor.

Where appropriate, a note should be made of the fact that the patient has received written or other information in a set form.

References

Footnote

*The *Australian Health Insurance Commission* has a free telephone interpreting service to assist doctors in private practice. It undertakes to provide interpreters in major community languages within three minutes. Contact the Doctors' Priority Line 1300131450 or see <http://www.immi.gov.au/general/doctor/index.htm>

For more information on consumer rights in New Zealand, refer to the *New Zealand Health & Disability Commissioner's Code of Consumer Health*
http://www.hdc.org.nz/aboutus/The_Code/TheCode.html

Links to other College statements

[C-Gen 6: Guidelines for visiting surgeons conducting demonstration sessions](#)

Disclaimer

This College Statement is intended to provide general advice to Practitioners. The statement should never be relied on as a substitute for proper assessment with respect to the particular circumstances of each case and the needs of each patient. The statement has been prepared having regard to general circumstances. It is the responsibility of each Practitioner to have regard to the particular circumstances of each case, and the application of this statement in each case. In particular, clinical management must always be responsive to the needs of the individual patient and the particular circumstances of each case. This College statement has been prepared having regard to the information available at the time of its preparation, and each Practitioner must have regard to relevant information, research or material which may have been published or become available subsequently.

Whilst the College endeavours to ensure that College statements are accurate and current at the time of their preparation, it takes no responsibility for matters arising from changed circumstances or information or material that may have become available after the date of the statements.