

## Consent to dental treatment

A dentist working in partnership with a patient to make good clinical decisions goes to the heart of good dental practice. It is essential for the therapeutic relationship of mutual respect and trust between dentist and patient to exist. It is a fundamental legal principle and necessary to protect a patient's autonomy. Dentists must respect that a patient must give permission for any dental treatment or examination to be carried out.

When obtaining consent from a patient, a dentist must have a full understanding of the procedure or treatment, how it is carried out and the risks associated with it and be in a position to inform the patient accordingly.

### Informed consent

It is the dentist's responsibility to ensure that a patient has been given sufficient time and information to make an informed decision about the treatment or investigation proposed, including the prescription of medication.

Obtaining informed consent requires practitioners to keep their patients up-to-date with any changes in their condition and any treatment or investigation proposed.

The HSE National Consent Policy (available on the HSE website) in Appendix 4 provides guidance on how to best to facilitate communication with the person facing a decision about treatment options such as:

- **Timing:** *If practicable, choose the time of day when the person is most alert and able to make the decision.*
- **Environment:** *Choose the best physical location such as a quiet room and minimise distractions such as phones ringing or noise from a television*
- **Supporter:** *Some persons may wish to have someone close to them or an advocate present during discussion, and this should be facilitated where possible.*  
**Manner of communication:** *Speak clearly and slowly and use simple and concise language avoiding medical terminology and jargon where possible.*
- **Use of printed or other educational material:** *Standardised informational material should always be additional to and not instead of an oral explanation.*
- **Use of communication aids:** *or those with communication difficulties, more specific assistance may be required. Ask the person or someone close to them if there are supports that could be provided to help the person understand, retain and respond to the information being shared with them. Specific communication assistance may be helpful for some, such as use of pictures, drawings, communication boards, yes/no signals and using sign, lámh or another sign system specific to the person.*

Any discussions with patients about the risks and benefits of a proposed procedure or treatment should be documented in the patient's records. Adequate time should be allocated to communicate with patients to obtain informed consent.

Information leaflets are not a substitute for detailed discussion. If leaflets are given to augment discussion with a patient this fact should be documented in the patient's notes.

## Verbal v written consent

Patients can give consent orally or in writing, or they may imply consent by complying with the proposed examination or treatment, for example, by opening their mouth so that you can conduct an examination.

Before examinations, dentists should always explain what is involved and obtain verbal consent before proceeding. The Dental Council's Code of Practice: *Professional Behaviour and Ethical Conduct* ('the Code of Practice'), available on the Dental Council website, strongly recommends that when you (or a member of your staff) are treating a patient, you have a third person present in the surgery throughout the procedure. This is mandatory if you are treating children or vulnerable adults.

When carrying out minor or routine investigations or treatments, if a dentist is satisfied that the patient understands what is proposed and the reasons for it, it is usually sufficient to have verbal consent.

You must get written consent if the treatment is being carried out under general anaesthesia or conscious sedation. As part of the consent process and before you administer the sedation or general anaesthetic, you must inform the patient of any additional risks associated with these procedures.

## Refusal of consent

Every adult with capacity is entitled to refuse dental treatment or withdraw consent and dentists must respect a patient's decision to refuse treatment or withdraw consent, even if they disagree with that decision, consider it unwise or likely to lead to serious harm to the patient.

In these circumstances, a dentist should explain clearly to the patient the possible consequences of refusing treatment and, where possible, offer the patient a second dental opinion. It is very important to take detailed notes of any such discussions with a patient.

If you have any doubts or concerns about the patient's capacity to decline treatment, you must comply with the provisions of the Assisted Decision Making (Capacity) Act 2015.

## Capacity

Please also see Medisec's factsheet on Assessing Capacity for Dental Treatment (available on our website).

Ordinarily, adults are presumed to have the capacity to make decisions about their own dental treatment. Under the Assisted Decision-Making (Capacity) Act 2015, a person lacks capacity to make a decision if they are unable:

- to understand the information relevant to the decision,
- to retain that information long enough to make a voluntary choice,
- to use or weigh that information as part of the process of making the decision, or
- to communicate his or her decision (whether by talking, writing, using sign language, assistive technology, or any other means).

## Dental Council Guidelines

Paragraph 7 of the Dental Council's Code of Practice: *Professional Behaviour and Ethical Conduct* ('the Code of Practice'), available on the Dental Council website, provides general guiding principles in relation to capacity to consent.

The Code of Practice states that:

7.1 *You must get the informed consent of your patient before you begin any treatment. You must give patients enough information to help them to make an informed decision about their care. As set out in section 5.1, you must take all reasonable steps to ensure that your patient understands the:*

- *diagnosis;*
- *treatment plan;*
- *benefits and expected outcomes of treatment;*
- *possible risks;*
- *benefits and risks associated with no treatment; and*
- *the expected costs.*

*You must help the patient to make a decision by answering their questions openly and by outlining the risks associated with their treatment options. A patient has a right to refuse or withdraw their consent to treatment at any point during the course of treatment.*

7.2 *Before starting treatment, you must obtain verbal or written consent, including agreement about costs. We recommend getting written consent if your patient is undergoing extensive treatment. While patients aged 16–18 years old can legally consent to treatment, it is often a parent or guardian who is paying for the treatment, so we advise, with the patient's consent, discussing the treatment and costs with the parents or guardian also.*

7.3 *The information a patient needs before making a decision will vary depending on several factors. These factors will include:*

- *the nature and complexity of treatment options; and*
- *any significant or common risks associated with the treatment options.*

*Patients will usually need more detailed information about:*

- *lengthy or complex procedures; or*
- *procedures that carry a significant risk of failure or that could have adverse effects*

7.4 *You must get written consent if the treatment is being carried out under general anaesthesia or conscious sedation (which is a technique to reduce anxiety and pain during dental procedures). As part of the consent process and before you administer the sedation or general anaesthetic, you must inform the patient of any additional risks associated with these procedures.*

7.5 *By law, you must get the consent of a parent or guardian when treating a patient under 16 years of age. We recommend that you talk to a child or young adult about their treatment and give them enough information to help them be part of the consent process.*

7.6 *If you believe that an adult patient does not have the capacity to understand the information about their treatment to the extent they need to give informed consent, you should reach an agreement about treatment with the support person who is closest to the patient. This could be, for example, the patient's advocate, relative or carer. You should keep a record of the discussion and how and why decisions were made in the patient's records.*

7.7 *This agreement with a third party has no legal basis under current Irish law. You must, at all times, act in the patient's best interests under your duty of care to your patient. If it is appropriate, you may look for a second opinion before you begin treating an adult patient who you believe has a reduced capacity to make an informed decision.*

## Consent with Children and Young People

The Code of Practice clearly outlines that by law, you must get the consent of a parent or guardian when treating a patient under 16 years of age. The Code of Practice recommends that you talk to a child or young adult about their treatment and give them enough information to help them be part of the consent process.

Patients aged 16 years and over are entitled by law to give their own consent to surgical, medical or dental treatment. The Code of Practice states that *“While patients aged 16–18 years old can legally consent to treatment, it is often a parent or guardian who is paying for the treatment, so we advise, with the patient’s consent, discussing the treatment and costs with parents or guardian also.”*

If you are in doubt about providing treatment to a minor, you should seek advice from your indemnifier.

A refusal of treatment by a 16–17 year old (who has the capacity to make this decision) is legally differentiated from consent to treatment. The Court can overturn this refusal of treatment if it considers this to be in the young person’s best interests. Consideration should be given to seeking legal advice if this situation arises.

## Confidentiality and children

It is important to note that children and young people have a right to confidential dental treatment, but parents and guardians also have a legal right to access dental records of their children until they are 18. You should tell children and young people that you cannot give an absolute guarantee of confidentiality.

## In summary

Ensure adequate consent is obtained prior to any investigation or procedure, eg,

- The nature and purpose of the procedure has been fully explained.
- The patient has been warned of the risks involved.
- The alternatives to the procedure have been discussed.
- A patient information leaflet was given (if available).

Record all verbal and written consent in the patient’s record indicating that consent was obtained, and the risks/benefits explained.

If you have any specific queries in relation to consent, please contact a member of the Medisec team.

The contents of this publication are indicative of current developments and contain guidance on general dento-legal queries. It does not constitute and should not be relied upon as definitive legal, clinical or other advice and if you have any specific queries, please contact Medisec for advice.