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NEW ZEALAND CODE OF PRACTICE

INFORMED CONSENT

INTRODUCTION

The dentist has an ethical and statutory responsibility to communicate effectively and take reasonable steps to ensure that the patient is given all the information necessary to make an informed choice. The amount of information required is outlined in consumer law including that found in The Health and Disability Commissioners Act 1994 and The Code of Health and Disability Services Consumers Rights 1996. These provide for the statutory right of the consumer to be fully informed (Right 6) and to make an informed choice and give Informed Consent (Right 7).

The extent of discussions and the need for written consent was in the past, a matter of dentist ethical judgement. Now, however, consumer law and demands have sought to define the 'informed consent' process. While this Code seeks to define and clarify Informed Consent, much is still left to a dentist's professional judgement.

'Informed Consent' means the patient has been given information on treatment proposals and on the basis of this, may 'consent' to a discussed treatment plan. The process must involve effective communication (Right 5), and the information provided will be broader than the right to information on treatment proposals alone (Right 6).

Some treatments need more information, detailed and written, others, which are routine and regular, require only verbal discussions and consent.

The NZDA has produced a form for recording Informed Consent. Practitioners must use commonsense when using such a form and deciding whether the form is adequate. Informed consent is clearly a process and not just the signing of a form

CRITERIA FOR INFORMED CONSENT PROCESS

1. Effective communication (Right 5)
2. Provision of information (Right 6)
3. Make an informed choice and give informed consent (Right 7)

Consent then becomes 'granting to someone the permission to do something they would not have the right to do without such permission'. The patient must indicate approval for, or decline that/those procedure(s).

DEFINITIONS

1 Information

Right 6 of the Code of Rights gives every consumer the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive. It also sets out a list of such information being indicative of the type of information that a provider should make available. The information must include, but is not limited to, the following (Right 6 [1]):

- **An explanation of the existing condition**
- **An explanation of the options available including an assessment of the expected risk, side effects, benefits, and costs of each option**
- **Advice of timeframes**
- **Notification of any proposed participation in teaching or research, including whether the research requires and has received ethical approval**
- **Any other information required by legal, professional, ethical, and other relevant standards**
- **The results of tests**
- **The results of procedures**

In addition, consumers are entitled to honest and accurate answers to questions about services, the identity and qualifications of the provider, and how to obtain an opinion from another provider. If requested, a written summary of the information shall be provided.

2 Effective Communication

Right 5 of the Code of Rights entitles every consumer to effective communication in a form, language and manner that enables the consumer to understand the information provided, and to create an environment that enables open, honest, and effective communication. The involvement of family, whanau or other support persons may often be of assistance to aid understanding. This may include, where necessary and reasonably practicable, the right to a competent interpreter.

3 Competency

Every consumer must be presumed competent to make an informed choice, or give informed consent, unless there are reasonable grounds for believing that the consumer is not competent. All the rights in the Code are applicable to consumers of health and disability services, regardless of age. Age is a relevant factor to take into account when determining competency and is one of a number of factors to be considered.

The factors in addition to age that must be considered include the level of understanding and maturity of the person, and the gravity of the procedure. It is important that the provider determines whether the particular individual, regardless of their age, has the capacity to consent to the particular form of treatment proposed.

When a consumer has diminished competency, that consumer retains the right to make informed choices and give informed consent to the extent appropriate to his/her level of competence.

Determining Competency

In any communication regarding Informed Consent, the dentist should validate a patient's comprehension through techniques such as asking the patient to describe what has been said. If the patient demonstrates confusion, an inability to reason, or behaviour inconsistent with past behaviour, the dentist must consult with an individual who is legally entitled to consent on the patient's behalf. If a person who is legally entitled to consent on behalf of the incompetent

consumer is available, consent to treatment should be obtained from that person. Persons who may legally consent on behalf of a consumer are legal guardians (parents/guardians under the Guardianship Act, or a welfare guardian appointed under the Protection of personal and property Rights Act), and an enduring power of attorney for the personal care and welfare.

This person is not always obvious or easy to contact. In this situation, a provider must go through the process of Right 7 [4] before providing treatment to that patient.

Right 7 [4] of the Code of Rights clearly sets out the steps a provider must take before providing treatment to an incompetent consumer. These steps are only applicable where no person entitled to consent on behalf of the consumer is available. The provider may provide services in this situation where (Right 7 [4]) -

- (i) It is in the best interests of the consumer;
- (ii) Reasonable steps have been taken to ascertain the views of the consumer; and
- (iii) Either:
 - If the consumer's views have been ascertained and, having regard to those views the provider believes, on reasonable grounds, that the provision of the services is consistent with the informed choice the consumer would make if he or she were competent; or
 - If the consumer's views have not been ascertained, the provider takes into account the views of other suitable persons who are interested in the welfare of the consumer and available to advise the provider.

4 Consent

Consent to treatment given by a parent or guardian does not necessarily imply consent by a child or impaired adult. Dentists at all times must be aware that these patients have the right to refuse treatment, and care must be exercised in proceeding should there be doubts about consent. The consumer must still be provided with information proportionate to their level of ability to understand, and retains the right to make informed choices and give informed consent to the extent appropriate to their level of competence.

5 Voluntary

There must not be any deception or coercion. Consent must be freely given by the consumer.

6 Specialist Referral

Where treatment is of a complex nature and outside the practitioner's training qualifications and experience, the dentist is required to fully and frankly inform a patient of the significance that specialist training and experience may have for the patient's treatment, along with the availability of such services. When referral to a specialist is considered the treatment of choice and this is declined by the patient, this should be noted in the patient's records.

ORAL AND WRITTEN CONSENT

Where informed consent to a health care procedure is required, it must be in writing (Right 7 [6]) if -

- (i) The consumer is to participate in any research; or
- (ii) The procedure is experimental; or
- (iii) The consumer will be under general anaesthetic; or
- (iv) There is a significant risk of adverse effects on the consumer.

A signed consent form can only be regarded as evidence that the person has made an informed decision where it can be shown that the decision is the outcome of discussion about the proposed

procedure. It is therefore important for the dentist to keep accurate contemporaneous written records of the discussion that has taken place prior to the provision of treatment.

Where the person giving the consent is conscious and does not object, oral consent is sufficient for minor procedures, which include most services carried out by general practitioner dental surgeons.

When in doubt about whether a procedure is major or minor, get written consent. If verbal consent is all that is deemed necessary, it is prudent to note this in the records.

In all situations keep careful, clear, written records.

TREATMENT FEES AND COSTS

Prior to providing treatment, the Dentist should ensure - via the informed consent process - that the consumer understands the costs (fees) involved in providing their dental treatment.

It is unwise for a dentist to prejudge a patient's ability to afford a particular treatment and the value the patient puts on the treatment. The dentist must discuss the cost and determine the fee level that the patient will be comfortable with in relation to treatment options - all of which must be outlined. This means the relative value of the proposed treatment to that patient requires the dentist to contribute to the patient's understanding of the delicate balance between cost, affordability and value.

INFORMATION TO BE GIVEN

1. An explanation of the patient's condition (Right 6 [1, a]), information about the costs of each option (Right 6 [1, b]), and advice of the estimated time within which the service will be provided (Right 6 [1, c]).
2. The nature, status (whether it is orthodox or developmental) and purpose of the treatment or procedure, including its expected benefits.
3. The likelihood of achieving that purpose: the prognosis.
4. The probable emotional, mental, functional and social outcomes of the proposed treatment.
5. All significant known risks, including general risks associated with procedures such as anaesthesia, the degree of that risk and the probability of its occurrence.
6. Possible complications or side effects of treatment.
7. Probable consequences of not receiving the treatment.
8. All relevant management options/alternatives with their probable effects and outcomes.
9. The name and status of the person who will carry out the procedure.
10. Other information requested by the person to receive the proposed treatment.

EVERYONE has the right to refuse treatment without fear of prejudice. If a person refuses/declines treatment, a record of their decision should be kept in their dental records.

WHEN IN DOUBT get a written consent. This is particularly valid when there is a compromise in treatment plans.

INFORMED CONSENT : NZDA GUIDELINES

Give a realistic assessment to the patient - the good news and the bad news. It is the patient's entitlement to know both sides. The patient must make their decision and give consent on your advice and information - be straightforward.

SOME EXAMPLES OF AREAS WHICH NEED SPECIAL CARE IN COMMUNICATION

Oral Surgery

- Impacted third molars, especially lower third molars with the possibility of nerve damage.
- Retained roots after surgery.

Endodontics

- Options available
- Success rates.
- Compromise versus definitive procedures.
- Separated instruments as a risk during treatment.

Dentures

- Relines of immediate dentures as a separate procedure after an indeterminate time.
- Retention is a critical subject relative to patient expectations. There should not be an over optimistic prognosis of retention improvement with relined or new dentures.

Restorative

- Heavily filled teeth.
- Deep restorations.
- Possibilities of cuspal fracture at the time or in the future or of pulpal involvement.
- Give a realistic prognosis.

Composite posterior restorations.

- Technique sensitivity.
- Possibility of leakage.
- Recurrent caries.
- Breakdown of the bonding and wear.
- Pulpal involvement.

Periodontology

- Do a periodontal examination at the initial visit. This may be a 'screening' type (BPE/PSR) or detailed. **RECORD THE RESULTS.**
- Record non compliance or difficulties with oral hygiene instructions.
- If you are unable to treat the disease, you should refer or give the option for referral. (note point 6 pg 3 Specialist referral)

Orthodontics

- If there are abnormalities you should refer, treat or give patient options. (note point 6 pg 3 Specialist referral)

Declined recommended tests or treatment

- If patients decline amalgam, X-rays, or any other recommendations it is prudent to note this in patient treatment records and even get the patient to sign.

Implants

- The option of implants should be considered with patients, not only the full or partially edentulous, but also when standing teeth are seriously compromised.