Avant factsheet:
Guidelines for patient consent

A patient needs to give consent before undergoing an examination, investigation, procedure or treatment – except in the event of a life-threatening emergency.

It is important to think of consent as an ongoing discussion, not just the signing of a form. The depth of the discussion will be influenced by, among other things, the seriousness of the procedure and the level of information required by the patient. Failure to obtain consent could expose you to a claim, complaint or criminal charge.

The requirements for consent

There are three components of the informed consent process:

Capacity

The ability to reason things out; to understand, retain, believe, evaluate and weigh relevant information. A person may lose capacity to make decisions permanently or temporarily, due to accident or illness.

Voluntariness

Patients must give their consent voluntarily.

Disclosure

Unless patients have sufficient information, they are not in a position to make a decision. Fundamental to obtaining consent is an explanation of the benefits, alternatives, risks and complications that may occur with the procedure or treatment. It is important to mention the possibility of no treatment as an alternative, if that is a real option on clinical grounds.

Consent must be obtained for the specific procedure or treatment.

NHMRC guidelines

In the process of obtaining informed consent, based on NHMRC guidelines, you are required to give the patient information about:

- the possible or likely nature of the illness or disease
- the proposed approach to investigation, diagnosis or management:
  - what the proposed approach entails
  - the expected benefits
  - common side effects and material risks of any intervention.
- whether the intervention is experimental or conventional
- who will undertake the intervention
- other options for investigation, diagnosis or treatment
- the degree of uncertainty about the therapeutic outcome
- the likely consequences of not choosing the proposed diagnostic procedure or treatment, or of not having any procedure or treatment at all
- any significant long-term physical, emotional, mental, social, sexual or other outcome that may be associated with the proposed intervention
- the time involved
- the cost involved, including out-of-pocket costs.

Discussion on Risk when obtaining consent

General
(type of the procedure, common risk of the procedure)

Specific
(risks specific to this procedure)

Particular
(individual circumstances of this patient, the material risks for this particular patient)

General risks

Known risks should be discussed with the patient. This includes risks that are general in nature, quite common and have only a slight detrimental effect, as well as the risks that are rare but their outcome is severe.

Specific risk

Risks specific to the actual procedure you are undertaking.

Material risk

You have a legal obligation to inform patients of the important or 'material' risks inherent in a proposed procedure or treatment. The emphasis is on the particular and the individual – what is material to one patient may not be to another. The particular circumstances of the individual patient will ultimately determine which risks are considered to be material by the patient (and ultimately, by the medical practitioner).

Asking patients: "What is the one thing you're worried about?" and other open questions will assist you in identifying risks material to the patient.

New and innovative procedures

If the procedure is something you have not performed many times before, you need to explain this to the patient in simple terms. In particular, you may be unaware of the risks associated with the procedure due to a lack of evidence.

Responsibility for consent

The person performing the procedure is responsible for obtaining consent or ensuring the informed consent has been obtained.

The cost involved

You need to outline the time and cost involved, including any out-of-pocket expenses and any potential costs, should further intervention be required. Full financial disclosure is important, particularly for private patients. It is important not only to have the conversation with your patient, but to also document what you discussed.

Additional information

Establish realistic expectations of the outcome

This could be as simple as saying, "You should be able to return to work in 4-6 weeks," instead of "in about a month", so the patient has a realistic idea of what to expect. If you are showing before and after photos, don't just include the best case scenario for the after photo but rather a range of outcomes.

Documentation for consent

- a signed consent form customised to include:
  - procedure-specific risks and outcomes
  - checklists of support material (brochures, diagrams, DVDs etc.) provided to the patient
  - particular information about risks material to the patient's circumstances
  - a statement which the patient signs, to the effect that they had an opportunity to ask questions, and had them answered to their satisfaction.
- contemporaneous notes in the patient file documenting your discussion with the patient
- a copy of any information brochures, diagrams or photos given to the patient should also be included in their notes.

Consent expiry time

If there has been a significant period of time between the date the original consent was obtained and the time of the planned procedure, you should have a further discussion with the patient to confirm their consent. Hospitals may have a policy dictating the length of time for which a signed consent is considered valid.

The Medical Board of Australia has produced Guidelines for registered medical practitioners who perform cosmetic medical and surgical procedures, which include specific requirements for consent and

'cooling off' periods. If you are undertaking cosmetic surgery, you should ensure you comply with those guidelines.

NHMRC. General guidelines for medical practitioners on providing information to patients. 1993. Copyright: Commonwealth of Australia. Reproduced with permission.

3912 10/18 (0641)

For more information or immediate advice, call our Medico-legal Advisory Service (MLAS) on 1800 128 268, 24/7 in emergencies.