

INFORMED CONSENT PROCESS STANDARD



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(Members may wish to consult with their personal legal counsel to address their specific circumstances)

GENERAL CONSENT

1. Members must obtain general consent to gather and maintain personal health information. In Saskatchewan, The Health Information Privacy Act legislates the gathering, maintenance, storage, use, sharing and disposal of personal health information.
2. Members must obtain general consent for the gathering of other personal information and electronic data. The Personal Information and Protection of Electronic Data Act (PIPEDA) governs the gathering, maintenance, storage, use, sharing and disposal of personal information and electronic data (basic personal data, billing information and data).

INFORMED CONSENT

3. Informed consent is a principle based on good communication of appropriate information and the right of each person to determine what will be done to his or her body and by whom. Informed consent guarantees each person the right to refuse treatment, to consent to treatment, and to withdraw consent to treatment.

INFORMED CONSENT PROCESS

4. Dentists have a legal and moral responsibility to act in the best interests of their patients. This includes providing advice to patients in an appropriate and understandable manner given the patient's capacity and respecting the patient's right to self-determination of their health through consent. Informed consent is a continual process, not a single event, a signature or a form letter.
5. There are two types of consent that occur within the profession of dentistry:
 - A. **Implied consent**
 - i. Implied consent is sufficient in the following situations:

1. Emergency situations where a delay could be hazardous to a patient's life.
2. Examinations (not including radiographic imaging)
3. A dental procedure that the patient has previously had performed on him or her if the following conditions are met:
 - a. The patient has previously had documented informed consent for this type of procedure at the same dental office
 - b. The risks, limitations, and benefits for the planned treatment are the same as for the previous treatment for which informed consent was obtained.

B. Express or informed consent

- ii. Given after disclosure of all information reasonable under the circumstances, which allows a competent person to make an intelligent decision on their future treatment. The level of disclosure by a dentist to a patient is measured by the patient's informational needs meaning what they believe they need to make a proper choice for themselves. Since different patients have different needs for information, the scope of disclosure will vary even among patients with the same condition. An example is a procedure beyond a simple examination such as Imaging procedures, extractions, fixed surgery, and removable prostheses, orthodontics, implants, sedation, endodontics, and non-surgical procedures that may cause change or harm to the body. all experimental procedures.
6. Patients are entitled to know whether the provider is or will be a General Dentist, Specialist, Dental Assistant, Dental Hygienist, Dental Therapist or other.
7. Oral and written consent are legally acceptable, however, oral consent must be documented in the patient's chart. Any documentation of oral consent must include a reference to what was discussed as part of the informed consent process. Signatures on forms have no meaning if the information on the forms has not been clearly articulated and understood by the patient. Consent forms do not absolve a dentist from liability when the dentist feels it is against his/her better judgment but the patient is insisting that this is the way they want it done. A consent form by itself is insufficient to ensure informed consent has been given.
8. Not all patients have the capacity to provide consent, so consent should be obtained from someone legally allowed to do so and consent should include the articulation and understanding of the costs involved.
9. There is no current authority in Saskatchewan, Statutory or Regulation, which bases consent on age. If a patient is capable of understanding the appropriate information provided to them, they can provide consent regardless of age. Thorough documentation of the process is prudent. Furthermore, if a parent or other party will be implicated as a 'payer' for the services proposed for consent, it would be prudent to obtain permission to approve the payment.
10. Further documentation beyond a consent/disclaimer form is required when patients choose not to accept or receive treatment. A disclaimer form could be useful when patients refuse to have recommended appropriate imaging performed or when they refuse to accept antibiotic prophylactic treatment.
11. Consent forms should include the following information where relevant:
 - a. Patient's name, address, and age;
 - b. Language and terminology that your patients will understand;
 - c. General description of the condition;
 - d. Specific, potential, or Differential Diagnosis;
 - e. Reasonable options for treatment that may include no treatment;
 - f. Nature and purpose of recommended treatment;
 - g. Risks, benefits of proposed treatment, and consequences of no treatment;

- h. Realistic outcome of treatment (aesthetic, functional or limitations);
 - i. Limitations of treatment including prognosis and discussion of costs and treatment that may be necessary if retreatment or revisions are necessary;
 - j. Estimated costs of proposed treatment;
 - k. Approximate timeline for completion of treatment;
 - l. Who will provide the treatment and follow up;
 - m. Expected ongoing maintenance care and follow-up once treatment is completed;
 - n. Additional responsibilities of the patient during and after treatment;
 - o. Signatures of the patient and a witness.
12. The dentist should be certain that the patient has consented to treatment.
13. Members must not make a misrepresentation respecting a remedy, treatment or device.
14. Members must provide patients or their legal guardian with the opportunity to have their questions answered.
15. Members should be aware of the adage 'before treatment it's an explanation; after harm happens, it's an excuse'.
16. Members are prudent to document the discussions with patients including your patient's consent to treatment - "if it is not written, it never happened".
17. Members are ultimately responsible for appropriate informed consent process. Trained staff may be utilized to perform appropriate informed consent process.
18. Display on the outside of the premises the name and phone number of the dentist(s) connected to the practice.

REPERCUSSIONS OF FAILING TO OBTAIN INFORMED CONSENT

When the College receives a complaint, the Professional Conduct Committee investigates the matter and determines if proper informed consent process occurred and if not, determine the appropriate resolution of the complaint.

A Civil statement of claim by the patient may allege that if they had known the risks prior to actions, they would have avoided the harmful outcome. To determine in favor of the patient, the court must be convinced that a reasonable person in the patient's circumstances would not have consented to treatment if the risks were disclosed. If a reasonable person would have consented, even with the risks, then the dentists may be able to avoid civil liability.