
Avoiding Problems Down The Road

QUESTIONS & ANSWERS ABOUT CONSENT

Questions about how and when to obtain informed consent from your patients arise every day in your busy dental office. Most dentists have become very adept at dealing with this often complex issue. However, some situations arise from time to time that create some uncertainty and members seek advice from the College. Here are some examples of recent inquiries we have received about consent issues.

COLLEGE CONTACTS

Dr. Lesia Waschuk
Practice Advisor
416-934-5614
1-800-565-4591
lwaschuk@rcdso.org

Dr. Robert Carroll
Manager, Professional
Practice
416-934-5611
1-800-565-4591
rcarroll@rcdso.org

Dayna Simon
Assistant to the Registrar,
Legal
416-934-5618
1-800-565-4591
dsimon@rcdso.org

Q: Do I have to include fees in a discussion about informed consent for treatment?

Yes, it is prudent to discuss a fee estimate or submit an insurance predetermination. The cost of treatment is a critical issue for many patients and unfortunately may ultimately decide whether or not they proceed with treatment. It should be clear to the patient whether or not the fees quoted include lab fees, x-rays, etc.

With respect to insurance copayments and deductibles, dentists are encouraged to make information available to the patient that will allow the patient to make his or her own assessment of what the insurance coverage will be and indicate that the patient will be responsible for the full amount, including any amount not covered, since dentists may be unaware of the exact nature of the coverage and of any deductible or if a patient may have exhausted the coverage.

Patients should also understand the full treatment plan, including risks, benefits and alternative treatment, and the fees for all treatment phases. For example, a patient may consent to a root canal on a tooth and not understand that it will have to be followed by a crown at an additional cost.



Q Avoiding Problems Down The Road

QUESTIONS & ANSWERS ABOUT CONSENT

➤ Unfortunately, miscommunication or lack of communication about fees results in many formal complaints to the College each year. This is one area where a little extra time spent explaining the anticipated costs goes a long way to avoiding problems down the road.

Q: My patient filled in an informed consent form last year. Doesn't that cover everything?

No. We often say that generic or "blanket" consent forms are not worth the paper they are written on. Informed consent must be specific to the patient and to the anticipated risks and benefits of the treatment contemplated. It is impossible to have a form whereby the patient can give consent for something unexpected that may arise during the course of treatment. Also, forms that purport to obtain consent for non-specified treatment that may arise at any point in time will not be able to be relied on should a problem or dispute arise.

Q: What if my patient is currently under sedation and in my professional opinion more work needs to be done at that time?

While a patient is under sedation is absolutely not the time to obtain informed consent to further treatment. Patients may be confused, feel vulnerable or pressured, or even have no recollection of the discussion. A consent obtained in these circumstances will likely be found to be legally invalid. Informed consent must be obtained prior to and not during or after treatment.

If the further treatment is not something that you

previously discussed with the patient and obtained informed consent for, in a non-emergency, you will have to wait for the patient to recover from the sedation, obtain the proper consent and do the further treatment at a later date. You cannot unilaterally decide to proceed with treatment just because in your opinion it is in the best interests of the patient.

If the patient is a child and treatment is to take place under general anaesthetic in a hospital, the issue becomes more complicated. Discussions with the parent/guardian about the treatment options and possible fees should be discussed in as much detail as possible in advance of treatment to see if informed consent can be obtained for the various options. For further direction, we advise you to seek advice from the College on a case-by-case basis.

Q: I perform orthodontic treatment and my partner does cosmetic dentistry. If we want to use patient photographs and x-rays for promotional use or research, teaching, publication, or any other non-treatment purpose, what type of consent should we be getting?

The key here is that patients must consent to the collection, use and disclosure of their personal information, which includes photographs and x-rays, even if they are rendered anonymous. If you wish to use a patient's personal information for non-treatment related purposes, you must get the patient's express consent do so and it should be in writing.

The College suggests that in a consent document it is appropriate to isolate the non-treatment uses in a separate paragraph or document than the treatment

related consent. By doing so, the patient can consent to only the treatment related uses and disclosures and decline to “opt in” to the non-treatment ones.

Treatment should not be refused because the patient refuses consent for the collection, use and disclosure of his or her personal information for non-treatment purposes. If a dentist is contemplating a large research project, for example, in cooperation with a university or a hospital, the Personal Health Information Protection Act should be consulted as it sets out specific criteria for such research.

Q: What is the legal age of consent?

While 18 is the age of majority in Ontario with respect to a person’s legal ability to enter into contracts, there is no fixed age of consent for medical or dental treatment. As a general rule, for patients under the age of 12, consent should be obtained from the parent(s) or guardian(s) of the child. For patients aged 16 and above, the dentist should presume, in the absence of evidence to the contrary, that the minor can provide consent on his or her own behalf.

The most difficult determination will be for patients between the ages of 12 and 15. For this age group, the dentist is advised to initiate a discussion with the patient and make an assessment as to whether the patient has the capacity to consent on his or her own. Of course, with the patient’s permission, the parents can and should be involved in the decision and consent may be obtained from both the patient and the parent(s).

It is important to remember that, although a minor may be able to consent on his or her own behalf to treatment and information collection, use and disclosure, no person under the age of 18 can enter into a legally binding contract. That means that a payment arrangement entered into with a minor cannot be enforced. A patient’s parent(s) or guardian(s) may, of course, enter into a binding

contract with the dentist for the fees associated with the minor’s dental care. In addition, a minor patient who can give consent to treatment is entitled to have his or her medical records kept private from parents, even though the parents may be paying for the treatment.

Q: My patient consented to a treatment plan. Now she says she has changed her mind. What should I do?

One of the fundamental elements of the law of consent is that a patient is entitled to change his or her mind at any time and withdraw consent. A withdrawal of consent should be noted in the chart and must be respected despite the inconvenience it may cause.

Q: What type of consent do I need to obtain for routine x-rays?

Even though x-rays may be routine, the nature and purpose of the x-rays should be explained to the patient and express consent obtained.

Many patients have worries associated with exposure to x-rays, particularly with respect to their children, so dentists are advised to speak to the patient or the parent(s) to answer any question or allay any concerns they may have. If a child will be attending without a parent or guardian for recall appointments and it is anticipated that diagnostic x-rays or specific treatment, such as fluoride, will be recommended, the dentist needs to obtain specific consent from the parent or guardian in advance for both x-rays and fluoride treatment.



Q Avoiding Problems Down The Road

QUESTIONS & ANSWERS ABOUT CONSENT

- The dentist should be mindful that a minor patient who is capable of giving or refusing consent on his or her own behalf may do so even if it differs from the parent's consent.

Q: I recently heard the expression "informed refusal." What does that mean?

Informed refusal is when you have informed the patient of all treatment options, including the risks, benefits, expected outcome, fees and the consequences of no treatment, and the patient decides to refuse treatment. While a patient is entitled to do so, you should ensure that you make very detailed and accurate notes of the discussion and the refusal in the chart since declining necessary dental services will often lead to a poor result for a patient down the road and possibly a complaint against the dentist.

Q: My patient has difficulty understanding and communicating in English (or French). How can I obtain his informed consent?

Ask the patient to bring a friend or relative to the appointment who is more fluent in the language to help facilitate in translation and communication. Do the best you can in the circumstances to satisfy yourself that the patient understands the critical information you are providing.

Q: Should I keep a record of the informed consent I have obtained?

Absolutely! This is critical should any dispute arise in the future. If it is not noted in the chart, it is as if it

never happened. If a patient has given consent in writing, i.e. for extensive, invasive, elective and/or expensive treatment, a copy should be given to the patient and one filed in the chart. If consent is obtained verbally, make a comprehensive notation in the chart of the discussion including diagnosis, risks, benefits, treatment alternatives, prognosis, fees and the consent obtained. When it comes to documenting discussions with patients about informed consent, there is no such thing as a record that is too detailed.

Q: Where can I get more information about informed consent?

Great question! The College has worked diligently to try to provide you with the latest resources on informed consent. We recommend consulting the following:

- the new Practice Advisory entitled Informed Consent Issues Including Communication with Minors and Other Patients Who May Be Incapable of Providing Consent (August 2007);
- the Staying Safe educational learning package with DVD and workbook produced by the College in 2006;
- the Health Care Consent Act available online at www.e-laws.on.ca;
- the Personal Health Information and Protection Act available online at www.e-laws.on.ca;
- the informed consent article authored by Eleanore Cronk (now a judge on the Ontario Court of Appeal) available at www.rcdso.org;
- the professional practice staff at the College.