

# Documenting Informed Consent

*A Review of **The Process** To Obtain a Consent and **Practical Tips** for Documenting The Process*

**This article provides a brief summary of the required elements relative to obtaining your patients' informed consent to treatment, and some practical suggestions for documenting such discussion, and the fact that the patient has consented to treatment.**

You can find a comprehensive discussion of the issues related to informed consent in the important article written for the College by the then Eleanore A.

members along with the June 2001 issue of *Dispatch*. See the end of this article for information on how to get a copy of this article.

“ The best evidence of a full and complete and complete discussion regarding consent to treatment is still the practitioner's own clinical notes. ”

Cronk, now Madame Justice Cronk of the Court of Appeal of Ontario.

The article entitled, *Informed Consent in 2001: "Don't Leave Home Without It"*, was originally distributed to all

### **Age of Consent**

There is no age of consent relative to medical or dental treatment. It is the responsibility of the dentist to determine whether the patient is capable of

consenting to treatment and understanding the reasonably foreseeable risks and consequences of the different treatment options and non-treatment.

Parents (legal guardians) may make consent decisions for minor patients who are not capable of giving consent. Substitute decision-makers may make consent decisions for adults who are not capable of giving consent because of their cognitive abilities.

For further information, you can consult the *Guidelines for Communicating with a Patient Incapable of Providing Consent*.

Dentists must take steps to ensure that the patient understands the information being provided. This may mean, for example, using lay language.

Where the dentist and the patient do not speak the same language, the dentist must ensure that a translator is available to provide the patient with the information in a language he/she can understand. The translator can be a dental office staff member, or a friend, or family member of the patient.

Visual aids or diagrams may also be helpful in such circumstances to ensure that patients understand the dental treatment being proposed. If such aids are used, document their use in the patient record.

### Age of Majority

Dentists should note that there is an age of majority (age 18) for entering into contracts, including an agreement to pay for dental services.

There is no minimum age for consent to treatment. A young teenager may be perfectly capable of understanding and appreciating risks and can give consent.

If a teenager is capable of consenting to treatment in the dentist's opinion, the dentist should ask the patient for his/her consent to involve the parents in the discussion regarding the cost of the different treatment options. This is because the parents will be responsible for paying for the treatment.

If the teenager is not able to consent to treatment, the dentist must obtain the parents' consent to treatment, and their agreement to pay for treatment.

### Valid Informed Consent

In order for consent to be informed and valid, patients, parents, legal guardians, or substitute decision-makers must be provided with the following information during informed consent discussions:

- the diagnosis or problem noted;
- the nature of the proposed treatment;
- the expected benefits, material risks, side effects, and cost of the proposed treatment;
- alternative courses of action and risks, benefits, and costs associated with these treatment options;
- the likely consequences of not proceeding the treatment, if any.

As Madame Justice Cronk discusses in her article, the case law emphasizes that the scope of required disclosure may vary in emergency and non-emergency situations, and for treatments that are necessary and for those that are undertaken purely for cosmetic reasons.

In emergency situations where a delay in obtaining consent to treatment may endanger a (minor or incompetent) patient's life, consent to treatment is not required.

Dentists may delegate certain elements of the communication with

whether the patient consents verbally or in writing.

As Madame Justice Cronk notes in her definitive article on consent:

...the best evidence of a full and complete and complete discussion regarding consent to treatment is still the practitioner's own clinical notes.

Chart entries, therefore, should indicate the nature and scope of the discussion. These entries can be made by the dentist or a staff member present during the consultation.

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patients to their staff; for example, details of costs of different treatment options, financial arrangements, discussion of technical aspects of treatment, co-ordination or scheduling of appointments. However, it is the dentist who is responsible for obtaining the patient's consent to treatment.

Only the dentist may communicate a diagnosis as the cause of a patient's symptoms, as this is a controlled act under the *Dentistry Act, 1991*. In addition, it is only the dentist who has the knowledge to advise the patient regarding the prognosis and risks of the different treatment alternatives.

### Documenting Consent

Both verbal and written (signed) consent are legally acceptable; however, the College recommends that verbal consent be confirmed in writing where risks are significant. Dentists must also document the consultation/discussion in the patient's record regardless of

Dentists can document the consent process in the patient's records in a variety of ways, including:

- using abbreviations or acronyms for commonly discussed dental treatments or risks when making notations in their chart entries;
- noting in the chart entries that they have used visual aids (models, videotapes) or distributed printed information to patients;
- discussing treatment plans and risks as outlined in a variety of standard consent forms that patients can sign following their consultations and retaining these forms as part of the patients' records;
- using fill-in-the-blanks consent forms that dentists can complete during the consultations and patients can sign following their consultations and retaining these as part of the patients' records.

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