



DEPARTMENT OF HEALTH AND SOCIAL SECURITY

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Dear Sir Anthony

**CONSENT TO EXAMINATION OR TREATMENT**

Following our talks earlier this year on a revised guidance circular and model consent form the Department agreed to redraft the documents, having considered carefully the comments which you had made.

We have also received a large number of comments from other medical and consumer/patient bodies as a result of our original consultation exercise, and these also have had to be considered.

I am enclosing a copy of our current draft to give you an opportunity to make any final comments. I would be grateful if I could have your response within the next six weeks.

I am copying this letter to Dr Field and the Secretary of the BMA in the usual way.

Yours sincerely

GRO-C

R M OLIVER  
Deputy Chief Medical Officer

## HEALTH SERVICES MANAGEMENT CONSENT TO EXAMINATION OR TREATMENT

The guidance in this circular will be cancelled and deleted from the current communications index on 28 February 1993 unless notified separately.

## SUMMARY

A patient has a right to grant or withhold consent prior to examination or treatment. Patients should be advised about proposed treatment and possible alternatives and be allowed to decide whether to accept the treatment. An explanation of the treatment and its foreseeable consequences should be given and the patients' consent recorded in their notes. Where the treatment carries substantial or unusual risk, both the giving of an explanation by the health professional and the giving of consent by the patient must be formally recorded on a consent to treatment form.

This circular sets out at

- Appendix A - A patients rights in accepting treatment.
- Appendix B - Advice to the doctor or other health professional in obtaining a patient's consent to treatment.
- Appendix C - Consent by patient's suffering from mental disability.
- Appendix D - Model consent form for recording consent to treatment.

## ACTION

Health Authorities should review their procedures for obtaining consent in the light of the advice given in this circular. The review and the introduction of documentation based on the model consent form should be completed by --/--. Revised consent forms should also be available in minority languages where necessary. A report that this has been done should be sent to the RHA by the DHA and to DH by SHA's.

## CANCELLATION OF CIRCULARS

## A PATIENT'S RIGHTS IN ACCEPTING TREATMENT

1. A patient has a legal right to give or withhold consent prior to examination or treatment (except in emergency or special circumstances) and this is one of the basic principles of health care. Subject to certain exceptions the doctor and/or health authority may face an action for damages if a patient is examined or treated without consent.
2. Care should be taken to respect the patient's wishes, particularly important when patients may be involved in the training of various professional disciplines and students. An explanation should be given of the need for practical experience and agreement obtained before proceeding. It should be made clear that a patient may refuse to agree without adversely affecting his or her care.
3. When patients give information to health professionals they are entitled to assume that the information will be kept confidential and will not be disclosed to anyone without their consent other than for the provision of their health care. The only exceptions to this general rule are where disclosure is ordered by a Court; required by statute; or considered to be in the public interest eg for the purpose of research. Where disclosure is made in the public interest appropriate safeguards must be applied.
4. Patients are entitled to receive in a way they can understand sufficient information about the possible and proposed treatments and their foreseeable consequences. Patients must be allowed to decide whether they will agree to the treatment, and may refuse treatment or withdraw consent to treatment at any time.

## APPENDIX B

## HEALTH PROFESSIONAL'S ROLE IN ADVISING THE PATIENT AND OBTAINING CONSENT TO TREATMENT

1. **Advising the patient.** Enough information must normally be given to ensure that they understand the nature and consequences of the treatment proposed so that they are able to take a decision based on that information. Though it should be assumed that most patients will wish to be well informed, account should be taken of those who may find this distressing.
2. The patient's ability to appreciate the significance of the information should be assessed. Special action may be needed with patients who:-
  - i. may be shocked, distressed or in pain;
  - ii. have difficulty in understanding English;
  - iii. have impaired sight, or hearing or speech;
  - iv. are suffering from mental disability but who nevertheless are competent to give consent to the proposed procedure (see also Appendix C - consent by patients suffering from Mental Disability).
3. Subject to the agreement of the patient and where circumstances permit it may help if a close family member or a friend can be present at the discussion when consent is sought. If this is not possible another member of the staff may be able to assist the patient in understanding, eg where there are language problems, the use of an interpreter may be considered.
4. A doctor also has a duty to warn patients of substantial or unusual risk inherent in any proposed treatment. This is especially so with surgery but may apply to other procedures including drug therapy and radiation treatment. Where a choice of treatment might reasonably be offered the doctor should advise the patient of his/her recommendations together with reasons for selecting a particular course of action.



5. Although doctors or other health professionals will consider what information is appropriate for their patients, where doubt has been expressed in any case it is always open to the courts to consider the adequacy of the information given and whether valid consent has been obtained.

6. **Obtaining consent.** Consent to treatment may be implied or express. Express consent may be oral or written. Consent given for one procedure or episode of treatment does not give any automatic right to undertake any other procedure. A doctor may, however, undertake further treatment if the circumstances are such that the patient's consent cannot be requested and provided the treatment is immediately necessary and can be medically justified.

7. **Implied consent.** In many cases patients do not give explicit consent but their agreement may be implied by compliant actions, eg by offering an arm for the taking of a blood sample.

8. **Express consent.** This is given when patients confirm their agreement to a procedure or treatment in clear terms, orally or in writing.

9. **Oral or written consent.** Oral consent may be sufficient for the vast majority of contacts with patients by doctors and nurses and other health professionals. Written consent should be obtained for any procedure or treatment carrying a substantial or unusual risk, and if the patient is capable of giving consent should always be obtained for anaesthesia, surgery, certain forms of drug therapy, and radiation treatment. Oral or written consent should be recorded in the patient's notes with relevant details of the doctor's explanation.

10. **Standard consent form.** The main purpose of written consent is to provide documentary evidence that an explanation of the proposed procedure or treatment was given and that consent was sought and obtained. The model consent form (see Appendix D) is aimed at setting out the requirements for obtaining valid consent to treatment in terms which will be readily understood by the patient.

11. It should be noted that the purpose of obtaining a signature on the consent form is not an end in itself. The most important element of a consent procedure is the duty to ensure that patients understand the nature and purpose of the proposed treatment. Where a patient has not been given appropriate information then consent may not have been obtained despite the signature on the form.

## SPECIAL CIRCUMSTANCES

Treatment of Young People

12. Young people under the age of 16 years. Where a child under the age of 16 achieves a sufficient understanding of what is proposed, that child may consent to a doctor or other health professional making an examination and giving treatment. The doctor or health professional must be satisfied that any such child has sufficient understanding of what is involved in the treatment which is proposed. A full note should be made of the factors taken into account by the doctor in making his assessment of the child's capacity to give a valid consent.

13. Young people over the age of 16 years. The effect of Section 8 of the Family Law Reform Act 1969 (see Annex 1) is that the consent of a young person who has attained 16 years to any surgical, medical or dental treatment is sufficient in itself and it is not necessary to obtain a separate consent from the parent or guardian.

14. Parental consent. Parental consent is required, save in an emergency, in all cases where a child does not have sufficient understanding and is under age 16. Parents may also give consent when a child is over age 16 eg where that child is not competent to give a valid consent but such power only extends until that child is 18. Where a child under 16 has sufficient understanding efforts should be made to persuade the child that his or her parents should be informed except in circumstances where it is clearly not in the child's medical interests to do so and notwithstanding that parental consent is not required.

15. Refusal of Parental consent to urgent or life saving treatment. Hospital authorities should rely on the clinical judgement of the consultants concerned after a full discussion between the consultant and the parents. In such a case the consultant should obtain a written supporting opinion from a medical colleague that the patient's life is in danger if the treatment is withheld and should discuss this with the parents or guardian in the presence of a witness. The consultant should record the discussion in the clinical notes and ask the witness to countersign the record. In these circumstances the consultant may wish to consult his or her defence organisation. If

he/she has followed the procedure set out above and has then acted in the best medical interests of the patient and with due professional competence and according to their own professional conscience, they are unlikely to be criticised by a court of law, or by their professional body.

#### Adult or competent young person refusing treatment

16. Some adult patients will wish to refuse some parts of their treatment. This will include those whose religious beliefs prevent them accepting a blood transfusion. Whatever the reason for the refusal such patients should receive a detailed explanation of the nature of their illness and the need for the treatment or transfusion proposed. They should also be warned in clear terms of the possible consequences if the procedure is not carried out. If the patient then refuses to agree, and he or she is competent, the refusal should be respected. The doctor should record this in the clinical notes and where possible have it witnessed.

#### Maternity Services

17. Principles of consent are the same in maternity services as in other areas of medicine. It is important that the proposed care is discussed with the woman, preferably in the antenatal period, when any special wishes she expresses should be recorded in the notes.

18. Decisions may have to be taken swiftly at a time when the woman's ability to give consent is impaired as a result of medication, including analgesics, or for other reasons. If the safety of the woman or child is at stake the obstetrician or midwife should take any reasonable action that is necessary. If it is felt that the woman is temporarily unable to make a decision, it may be advisable for the position to be explained to her husband or partner.

#### Breast Cancer

19. The usual principles of explaining proposed treatment and obtaining the patient's consent are followed in treating cases of breast cancer. Breast cancer does not normally require emergency treatment. Patients need reassurance that a mastectomy will not be performed without their consent until biopsy results and the need for any further surgery have been fully



discussed. Consequently in the majority of cases the further management of the disease can be discussed with the patient when the result of the diagnostic procedure of biopsy is known.

#### Tissue and Organ Donation: Risk of Transmitted Infection

20. Where tissues or organs are to be transplanted, the recipient should be informed of the small, but unavoidable risk of the transplant being infected at the time when consent to operation is obtained.

#### Teaching on patients

21. Detailed guidance about medical students in hospitals is the subject of a separate circular (HS(89)....). It should not be assumed, especially in a teaching hospital, that a patient is available for teaching purposes or for practical experience by clinical medical or dental or other staff under training.

#### Examination or Treatment without the patient's consent

22. The following are examples of occasions when examination or treatment may proceed without obtaining the patient's consent:

- i. For lifesaving procedures in an emergency (if for example, the patient is unconscious and cannot indicate his or her wishes).
- ii. Consent is not necessary if there is a statutory power requiring the examination of a patient, for example, under the Public Health (Control of Disease) Act 1984. However an explanation should be offered and the patient's co-operation should nevertheless be sought.
- iii. In certain cases where a child is a ward of court and the court decides that a specific treatment is in the child's best interests.
- iv. Treatment for mental disorder of a patient liable to be detained in hospital under the Mental Health Act 1983 (see Appendix C).



## FAMILY LAW REFORM ACT 1969

## SECTION 8

Consent by persons  
over 16 to surgical,  
medical and dental  
treatment

1. The consent of a minor who has attained the age of sixteen years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian.

2. In this section "surgical, medical or dental treatment" includes any procedure undertaken for the purpose of diagnosis, and this section applies to any procedure (including, in particular, the administration of an anaesthetic) which is ancillary to any treatment as it applies to that treatment.

3. Nothing in this section shall be construed as making ineffective any consent which would have been effective if this section had not been enacted.

## APPENDIX C

## CONSENT BY PATIENTS SUFFERING FROM MENTAL DISABILITY

(To be drafted by DH (MED MHI)).

CONSENT FORM  
FOR MEDICAL OR DENTAL INVESTIGATION OR TREATMENT  
Health Authority  
Hospital  
Unit number

Patient's Surname  
Other names  
Date of birth  
Sex                      Male                      Female

DOCTORS OR DENTISTS (see notes on the reverse)

Describe the type of operation investigation or treatment that you propose in simple terms, below at \*.

Complete this part of the form

I confirm that I have explained the operation investigation or treatment, and the form of any anaesthetic proposed, to the patient or to one of the parents or guardians of the patient

and that I believe that my explanation was understood.

Signature

Date / /

Name of doctor or dentist

TYPE OF OPERATION INVESTIGATION OR TREATMENT (to be completed by doctor or dentist)

★

## PATIENT

1. Please read this form very carefully.

2. If there is anything that you don't understand, or if you want more information, you should ask the doctor.

3. Please check that all the information on the form is correct. If it is, and you understand the operation, then sign the form.

I am \_\_\_\_\_ the patient.

I agree to have this operation, which has been explained to me by the doctor named on this form.

to have the type of anaesthetic that I have been told about.

I understand that the procedure may not be done by the doctor who has been treating me so far.

I give permission \_\_\_\_\_ for doctors to do any additional investigations or treatment during the operation described on this form but only if \_\_\_\_\_, they cannot ask my permission first and, it is urgent and can be justified for medical reasons.

Signature

Name

Address



CONSENT FORM  
FOR STERILISATION OR VASECTOMY  
Health Authority

APPENDIX D

Hospital

Unit number

Patient's Surname

Other names

Date of birth

Sex

Male

Female

DOCTORS OR DENTISTS (see notes on the reverse)

Describe the type of operation investigation or treatment that you propose in simple terms, below at \*.

Complete this part of the form

I confirm that I have explained the procedure and any anaesthetic required, to the patient or to one of the parents or guardians of the patient

and that I believe that my explanation was understood.

Signature

Date / /

Name of doctor or dentist

TYPE OF OPERATION (to be completed by doctor)

\*

## PATIENT

1. Please read this form very carefully.

2. If there is anything that you don't understand, or if you want more information, you should ask the doctor.

3. Please check that all the information on the form is correct. If it is, and you understand the operation, then sign the form.

I am the patient.

I agree to have this operation, which has been explained to me by the doctor named on this form.

to have the type of anaesthetic that I have been told about.

I understand that the operation may not be done by the doctor who has been treating me so far.

that the aim of the operation is to stop me having any children and the effects of the operation might not be possible to reverse

that sterilisation/vasectomy can sometimes fail, and that there is a very small chance that I may become fertile again after some time.

For vasectomy (a) that I will not be sterile immediately after the operation.

(b) that I will have to use some other contraceptive method until 2 tests in a row show that I am not producing sperm, if I do not want to father any children.

I give permission for doctors to do any additional investigations or treatment during the operation described on this form but only if  
, they cannot ask my permission first  
and, it is urgent and can be justified for  
medical reasons.

Signature

Name

Address

## Notes to

## i. Doctors, Dentists and other health professionals.

A patient has a legal right to grant or withhold consent prior to examination or treatment. The patient should be advised about the proposed treatment. Where the treatment carries any risks or unusual side effects (such as may arise with surgery, anaesthesia, some forms of drug therapy, vasectomy or sterilisation procedures) the patient must be advised in terms he or she can understand and the consent to treatment recorded on this form. (Further guidance is given in circular HC(89)-- consent to examination or treatment.)

## ii. Patients, parents and guardians

The doctor or dentist is here to help you. He will explain the proposed treatment and what the alternatives are. Training health professionals is essential to the continuation of the health service and improving the quality of care. Your cooperation may be requested and this will be discussed with you. You can ask any questions and seek further information. If you are uncertain you may wish a relative or friend to be present or one of the nurses will also be willing to help you. You have the right to refuse either the treatment itself or any involvement in a training programme without adversely affecting your care and treatment.