THE SCOTTISH OFFICE

National Health Service in Scotland
Management Executive

COMMON SERVICES AGENCY
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Dear Colleague

A GUIDE TO CONSENT TO EXAMINATION, INVESTIGATION, TREATMENT OR OPERATION

Summary

1. The Department of Health issued in August 1990 its Guide to Consent for Examination or Treatment. Ministers agreed that it was necessary to produce a similar guide for the use of health professionals in Scotland to maintain consistency throughout the UK in the area of patient consent. The result is A Guide to Examination, Investigation, Treatment or Operation, a copy of which I enclose. The guide is in 3 parts, covering:

- a patient's rights
- the health professional's role
- consent by patients suffering from mental disorder.

and includes specimen consent forms, for:

- medical or dental examination, investigation, treatment or operation
- sterilisation or vasectomy
- procedure by a health professional other than a doctor or dentist.

A bulk supply of the Guide will follow for distribution within the Board/Trust.

Action

2. To disseminate the Guide to all relevant staff.

Yours sincerely

GRO-C

G M THOMSON

Addressees

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A guide to consent to examination, investigation, treatment or operation

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CHAPTER 1

A patient's rights in accepting any procedure

1. A patient has the right under common law to give or withhold consent prior to examination, investigation, treatment or operation (subsequently referred to by the term "procedure") except in special circumstances which are described in paragraph 16 in Chapter 2. This is one of the basic principles of health care. Subject to certain exceptions the doctor or health professional and/or Health Board/NHS Trust may face an action for damages if any procedure is carried out on a patient without consent.

2. Patients are entitled to receive sufficient information in a way that they can understand about the proposed procedure, the possible alternatives and any substantial risks, so that they can make a balanced judgement. Patients must be allowed to decide whether they will agree to the procedure, and *they may refuse to undergo any procedure or withdraw consent to the carrying out of any procedure at any time.*

3. Care should be taken to respect the patient's wishes. This is particularly important when patients may be involved in the training of professionals in various 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 this adversely affecting his or her care.

4. When patients give personal information to health professionals or any other person employed by or contracted to the NHS they are entitled to assume that the information will be kept confidential and will not be disclosed to anyone without their consent and that it will be disclosed only in connection with the purposes of health care and social welfare to those who would be unable to provide effective treatment and care without that information. The only exceptions to this general rule are where there are overriding statutory requirements for disclosure; where disclosure is in the wider public interest and this outweighs the rights of a patient to confidentiality; where disclosure is necessary to prevent serious injury or damage to the health of a third party; or where disclosure is in the best interests of the patient. Disclosure without consent always raises extremely difficult questions involving moral, ethical and medical issues and such cases must be considered with great care. Guidance on confidentiality and disclosure is contained in the Code of Practice, Confidentiality of Personal Health Information, issued by SOHHD with NHS Circular No 1990 (GEN)22 on 7 June 1990.

CHAPTER 2

Health professional's role in advising the patient and obtaining consent to a procedure

Advising the Patient

1. Where a choice of procedure might reasonably be offered the health professional should always advise the patient of his/her recommendations together with reasons for selecting a particular course of action. Enough information, in plain English, must be given to ensure that patients understand the nature, consequences and any substantial risks of the procedure 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 the necessary detail distressing.

2. The patient's ability to appreciate the significance of the information should be taken into account and, if necessary, additional care should be taken with patients who for example:–

2.1 may be shocked, distressed or in pain;

2.2 have difficulty in understanding English;

2.3 have impaired sight, or hearing or speech;

2.4 are suffering from mental disorder but who nevertheless have the capacity to give consent to the proposed procedure. (See paragraphs 2 and 3 in Chapter 3).

3. Sometimes, where circumstances permit and subject to the agreement of the patient, it may help if a close family member or a friend can be present at the discussion when consent is sought. Where family members or friends cannot be present another member of the staff (eg a hospital or health centre social worker) may be able to assist the patient in understanding. Where there are language problems it is important, if at all possible, that an interpreter is on hand.

4. A health professional will have to exercise his or her professional skill and judgement in deciding of what risks the patient should be warned and the terms in which the warning should be given. However, a health professional has a duty to warn patients of substantial or unusual risk. This is especially so with surgery but may apply to other procedures including drug therapy and radiation treatment. Guidance on the amount of information and warnings of risk to be given to patients can be found in the judgement of the House of Lords in the case of Sidaway v Gov of Bethlem Royal Hospital [1985] AC 871 and in the Outer House decision of Lord Caplan in Moyes v Lothian Health Board, 1990 SLT page 444. (See also Appendix B).

Obtaining Consent

5. Consent to any procedure may be implied or expressed. In many cases patients do not explicitly give express consent but their agreement may be implied by compliant actions, eg by offering an arm for the taking of a blood sample. Express consent is given when patients confirm their agreement in clear and explicit terms, whether orally or in writing.

6. Oral consent may be sufficient in the vast majority of cases. Written consent should be obtained for any procedure carrying any substantial risk or substantial side effect. If the patient is capable, written consent should always be obtained for general anaesthesia and surgery and may be required in certain forms of drug therapy eg cytotoxic therapy, therapy involving the use of ionising radiation and interventional radiology. Oral or written consent should be recorded in the patient's medical records with relevant details of the health professional's explanation. Where written consent is obtained it should be incorporated in the records.

7. The main purpose of written consent is to provide documentary evidence that an explanation of the proposed procedure was given and that consent was sought and obtained. The model consent forms (see Appendix A) set out the requirements for obtaining consent in terms which will be readily understood by the patient. In the majority of cases these forms will be used by registered medical or dental staff but there may be occasions when other health professionals will also wish to record formally that consent has been obtained. A separate form is available for their use.

8. It should be noted that 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 the patient understands the nature and purpose of the proposed procedure. Where a patient has not been given appropriate information then consent may not always be deemed to have been obtained despite the signature on the form.

9. Consent given for one procedure does not give any automatic right to undertake any other procedure. A health professional may, however, carry out further procedures if the circumstances are such that a patient's consent cannot reasonably be requested and provided the further procedure is immediately necessary and the patient has not previously indicated that the further procedure would be unacceptable.

Obtaining Consent for Procedures Involving Children and Young People

10. By virtue of the Age of Legal Capacity (Scotland) Act 1991, which came into force on 25 September 1991, a person under the age of 16 has legal capacity to consent on his/her own behalf to any surgical, medical or dental procedure or treatment where, in the opinion of a qualified medical practitioner attending him, he/she is capable of understanding the nature and possible consequences of the procedure or treatment. A full note should be made of the factors taken into account by the Practitioner in making his or her assessment of the child's capacity to give a valid consent. In the majority of cases children will be accompanied by their parents during consultations. Where, exceptionally, a child is seen alone, 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 best interests to do so. However, if a child capable of understanding the nature and consequences of the treatment refuses to allow the parent(s) or guardian(s) to be informed, the doctor should respect the rules of professional confidentiality. Parental consent should be obtained where a child under the age of 16 does not have sufficient understanding save in an emergency where there is not time to obtain it.

Children in Local Authority Care

11. Except where a local authority holds parental rights under section 16 of the Social Work (Scotland) Act 1968, necessary consents for routine and emergency medical treatment for a child in care must be obtained from his or her natural parents or guardian. Guidance on medical issues which arise in connection with fostering arrangements for children in care or arrangements for placement in residential care is contained in SWSG circulars SW15/1985 and SW1/1988 which are obtainable on request from Social Work Services Group, Room 313, 43 Jeffrey Street, Edinburgh.

Refusal of Parental Consent to Urgent or Life Saving Procedures

12. Reliance should be placed on the clinical judgement of the doctor, normally the consultant, concerned after a full discussion between the doctor and the parents. In such a case the doctor, where possible, should

obtain a written supporting opinion from a medical colleague that the patient's life is in danger or there is a clear risk of serious permanent harm if the procedure is withheld and should discuss the need to carry out this procedure with the parents or guardian in the presence of a witness. The doctor should record the discussion in the clinical notes and ask the witness to countersign the record. In these circumstances and where practicable the doctor may wish to obtain advice through the relevant Unit, Trust or Health Board or through his or her medical defence association. If he/she has followed the procedure set out above and has then acted in the best interests of the patient and with due professional competence and according to their own professional conscience, that person is unlikely to be criticised by a court or by their professional body.

13. Where parental consent to urgent or life saving procedure, which is necessary for the health and welfare of the child, is not forthcoming and where it is felt that the medical practitioner or practitioners who are to carry out the procedure or administer the treatment, may risk challenge or legal action through the absence of such consent, it may be possible to consider presenting an appropriate petition to seek authority of the court for the procedure or treatment to be carried out in the absence of parental consent. It is thought that the circumstances in which such action is a practical proposition will be very limited because the immediacy or urgency of the medical problem will not allow time. If such action is contemplated legal advice should be obtained as soon as possible with a view to establishing the nature of the procedures which might be available.

Refusal to Accept a Particular Procedure by Adults or "Competent Young People" (see para 10)

14. Some adults and competent young people, for example those whose religious beliefs prevent them accepting a blood transfusion, may wish to refuse a particular recommended procedure. Whatever the reason for the refusal such patients should receive a detailed explanation of the nature of their illness and the need for the procedure that has been proposed. They should also be warned in clear terms of the possible consequences if it is not carried out and that the doctor may properly decline to modify the procedure. If the patient then refuses to agree, and he or she is competent, the refusal must be respected. The doctor should record this in the clinical notes and where possible have it witnessed.

Teaching on Patients

15. Detailed guidance about medical students in hospitals is given in NHS Circular No 1990(GEN)15. In general terms, students may have access to patients only under careful supervision and with patients' consent. Patients are entitled to decline to be observed or attended by students without affecting the treatment they receive.

Undertaking a Procedure Without the Patient's Consent

16. The following are examples of occasions when a procedure may be undertaken without obtaining the patient's consent:

16.1 For lifesaving procedures where the patient is unconscious and cannot indicate his or her wishes.

16.2 Where there is a statutory power requiring the examination of a patient, for example, under section 72 of the Health Services and Public Health Act 1968. However an explanation should be offered and the patient's co-operation should nevertheless be sought.

16.3 Treatment for mental disorder[1] to certain patients liable to be detained in hospital under the Mental Health (Scotland) Act 1984 which is given in terms of Part X of that Act. (See paras 1-9 and 17 and 18 in Chapter 3).

[1]Mental Disorder means mental illness, or mental handicap however caused or manifested and "mentally disordered" shall be construed accordingly

CHAPTER 3

Consent by patients suffering from mental disorder

1. The following paragraphs are a general summary of the law relating to consent to treatment by patients suffering from mental disorder. Those involved in treating such patients should be familiar with the relevant provisions of the Mental Health (Scotland) Act 1984 (particularly part X) and also the Code of Practice issued by The Scottish Office Home and Health Department under Section 119 of that Act. Specific legal advice should be sought wherever there is doubt about proposals for treatment and the necessity for obtaining consent in relation to such proposals.

2. Consent to any procedure must be given freely and without coercion and be based on information about the nature, purpose and likely effects of that procedure presented in such a way that it is understandable by the patient. The capacity of the person to understand the information given will depend on their intellectual state, the nature of their mental disorder, and any variability over time of their mental state. The ability of mentally disordered people to make and communicate decisions may similarly vary from time to time. The onus is always on the doctor carrying out the procedure to see that an adequate explanation is given.

3. The presence of mental disorder does not by itself imply incapacity, nor does detention under the Mental Health (Scotland) Act 1984. Each patient's capability for giving consent, has to be judged individually in the light of the nature of the decision required and the mental state of the patient at the time.

Mental Health Legislation – Treatment for Mental Disorders

4. Part X of the Mental Health (Scotland) Act 1984 regulates the position of patients detained in hospital in relation to consent to treatment for *mental disorder*. The principal categories to whom it applies are:–

4.1 "Short-term patients" detained under section 26;

4.2 "Interim-detention patients" detained under section 26A;

4.3 "Section 18" patients detained pursuant to an application for admission; and

4.4 Patients subject to Part VI of the 1984 Act (detention of patients concerned in criminal proceedings) who are treated as liable to be detained under the Act (but not patients who are liable to be detained by virtue of Sections 177 or 378 of the Criminal Procedure (Scotland) Act 1975 or restricted patients who have been conditionally discharged under Sections 64 or 68(2) of the 1984 Act).

It does *not* apply to patients who are "voluntary" or "informal" patients, patients admitted under an emergency recommendation for periods of up to 72 hours (Section 24) or patients detained under Section 25, 117 or 118 of the Act (nurse's holding and place of safety provisions).

Paragraphs 5-9 are a summary of the effect of the provisions of Part X. In any particular case it will be strongly advisable for those involved to refer to the Act in conjunction with the Notes on the Act published by The Scottish Office Home and Health Department, and with the guidance produced by the Mental Welfare Commission for Scotland and published as an Annex to the Code of Practice issued by the Department under section 119 of the Act.

5. Where Part X applies to a patient, the patient's consent is not in general required for medical treatment given to him/her for the mental disorder from which he/she is suffering where that treatment is given by or under the direction of the responsible medical officer. There are certain categories of treatment, however, where consent and a second opinion is still required or where a second opinion only is required.

6. Treatment involving:–

6.1 surgical operation for destroying brain tissue or its functioning; or

6.2 surgical implantation of hormones for the purpose of reducing male sexual drive;

requires the patient's consent and certification by a doctor (other than the responsible medical officer) appointed by the Mental Welfare Commission and two other persons (not being medical practitioners) that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it.

7. Treatment involving:–

7.1 electro-convulsive therapy; or

7.2 administration of medicine for mental disorder to a patient where 3 months or more have elapsed since the medicine was first administered during any period of detention;

requires the consent of the patient and certification by a medical practitioner (either the responsible medical officer or a practitioner appointed by the Mental Welfare Commission) that the patient is capable of understanding its nature, purpose and likely effects and has consented to it or certification by a medical practitioner appointed by the Mental Welfare Commission (other than the responsible medical officer) that the patient is not so capable but that, having regard to the likelihood of its alleviating or preventing a deterioration of his/her condition, the treatment should be given.

8. In certain circumstances, treatment as described in paragraphs 6 and 7 may be given without consent or a second opinion in situations of urgency. For instance, where treatment is immediately necessary to save a patient's life. Such treatment may also be given where immediately necessary to prevent a serious deterioration so long as the treatment is not irreversible. It might also be given to alleviate serious suffering or immediately to prevent the patient behaving violently or being a danger to himself or to others so long as it is not irreversible or hazardous.

9. The rules in Part X are complicated but they are important. The Mental Welfare Commission has issued guidance on the provisions for medical practitioners and generally has an important role to perform in the operation of the provisions. Where Part X does not apply to a patient, such as in the case of a voluntary patient, the principles of the general law of consent to treatment for physical disorders apply to any proposed treatment for such a patient's mental disorder. If a voluntary patient cannot, because of his/her illness, give a valid consent, or if he/she refuses the treatment, the treatment cannot be given. If the treatment is considered necessary by those treating the patient, they should consider resorting to the procedures for compulsory detention laid down in the Mental Health (Scotland) Act 1984.

Mental disorder or incapacity – treatment for physical conditions

10. The Mental Health (Scotland) Act 1984 does not regulate treatment of physical disorders of persons who are suffering from mental disorder. The general law of consent to treatment applies. This requires valid consent. A patient suffering from a mental disorder may be capable of giving consent if he/she is capable of understanding what he/she is being asked to consent to. It is necessary that full steps are taken to explain the nature and risks of the treatment to the patient. A reasonable amount of information must be provided. Where the patient lacks an adequate understanding he/she cannot validly consent on his/her own.

11. In one case, however, consent may not be necessary. That is in an emergency involving an unconscious patient requiring essential treatment. It is also thought that in an emergency essential treatment could be given to a conscious person who suffered from mental disorder.

12. Where a patient is incapable of giving consent and the proposed treatment is not essential treatment for an emergency situation, the treatment can be consented to if a tutor is empowered to give consent on the patient's behalf. A tutor can be appointed under the tutor-dative procedure on presentation of a petition to the Court of Session in Edinburgh. Such a petition would need to ask for appropriate specific powers.

13. In circumstances where the patient is incapable of consenting and the treatment is not in the essential category, the safer legal course appears to be appointment of a tutor under the tutor-dative procedure. Scots law is uncertain to what extent those proposing treatment can rely upon the principle of "necessity" to administer treatment without consent and where no tutor is appointed. The Scottish courts have not authoritatively decided this matter. The matter has been clarified in England in the House of Lords decision in *In Re F* (1989) 2 WLR 1025; (1989) 2 ALL ER 545. In that case, the House of Lords approved a decision authorising sterilisation of an adult woman with a mental handicap. The judgement clarified for English law the basis on which doctors can give treatment to patients incapable of consenting. The court concluded that a doctor could give treatment where it is in the best interests of the patient and that treatment will be in his or her best interests if, but only if, it is carried out in order either to save his/her life or to ensure improvement or prevent deterioration in his/her physical or mental health.

14. It remains a matter for debate in Scotland to what extent Scottish courts would follow the judgement in *In Re F*. It was a decision of the House of Lords but differences in the respective common law of England and Scotland make it uncertain how far the reasoning would be followed. The issue of consent to medical treatment of a mentally disordered person is, however, under consideration by the Scottish Law Commission who have invited comments on proposals for the reform of the law. The Commission have suggested that the decision in *In Re F* would probably be followed. Others have also argued that, in any event, it is likely that doctors can give non-controversial medical treatment which involves little risk to a person incapable of giving consent, without the need for consent by a tutor-dative, but the legal basis for these views is uncertain. In these circumstances, it is recommended that specific legal advice be sought where there is doubt about the legality of proposed treatment.

Sterilisation in those suffering from mental disorders

15. Sometimes treatment may be proposed, for example sterilisation, which is intended to avoid problems in the future life of the mentally disordered patient and not to cure or alleviate an illness or injury. The Scottish courts have not decided such a matter but the English courts have. The tutor-dative procedure should be invoked in Scotland to appoint a tutor who could obtain authority of the Court to consent to the proposed operations. It is thought that a tutor would need specific authority to grant such a consent. The House of Lords in the case of *In Re F* stated that it is highly desirable as a matter of good practice to involve the court in the decision to carry out an operation for sterilisation. It is thought that in Scotland, the court must be involved.

16. The criteria upon which a court would determine whether to give approval on the basis of the treatment being in the patient's best interests are not established in Scotland. It is thought, however, that the judgement of the House of Lords in the English cases of *In Re B* (1988) AC 199 and *In Re F* would have some persuasive authority. In the former the Court stated that it would need to know–

16.1 the patient's medical history and foreseeable future;

16.2 the risks of pregnancy occurring and the consequences if a pregnancy were to occur; and

16.3 alternative ways in which pregnancy could be avoided.

Documentation for mentally disordered patients

17. Proposals for treatment should as a matter of good practice be discussed with the multi-disciplinary team and where necessary other doctors and, if the patient agrees, with his or her nearest relative or friend. If the patient does not agree, or is incapable of agreeing, to such disclosure, those responsible for the patient's care should consider the matter in the light of the Department's Code of Practice on Confidentiality of Personal Health information, paragraph 13.1 of which provides:–

> "The decision on what should be disclosed and to whom must be based on an assessment of the best interests of the patient, and should take account of any known wishes of the patient, the next of kin, other relatives or those with powers of attorney. In mental health and mental handicap cases, the Mental Welfare Commission should be informed of such disclosure".

18. In cases involving anaesthesia and surgery, or where the treatment carries substantial or unusual risk, it would also be advisable for documentation to record the patient is incapable of giving consent and in the opinion of the medical practitioner attending the patient the treatment is necessary because it is essential treatment required in an emergency.

CONSENT FORM

APPENDIX A (1)

For medical or dental examination investigation, treatment or operation

Health Board .....
Hospital .....
Unit Number .....

Patient's Surname .....
Other Names .....
Date of Birth .....
Sex: *Male/Female

DOCTORS OR DENTISTS *(See notes on the reverse)*

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

Please complete this part of the form

I confirm that I have explained the procedure, and such appropriate options as are available and the type of anaesthetic, if any, (general/regional/sedation) proposed, to the patient in terms which in my judgement are suited to the understanding of the patient and/or to one of the parents or guardians of the patient

Signature ..... Date ...../...../.....

Name of doctor or dentist .....
(in block capitals)

PATIENT/PARENT/GUARDIAN

1. Please read this form and the notes overleaf very carefully.
2. If there is anything that you don't understand about the explanation, or if you want more information, you should ask the doctor or dentist.
3. Please check that all the information on the form is correct. If it is, and you understand the procedure, then sign the form.

I am the *patient/parent/guardian

I agree ■ to what is proposed which has been explained to me by the *doctor/dentist named on this form.

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

I understand ■ that the procedure may not be done by the *doctor/dentist who has been treating *me/the patient so far.

■ that any procedure in addition to that described on this form will only be carried out if it is immediately necessary and in my/the patient's best interests and can be justified for medical reasons.

I have told ■ the* doctor/dentist about any additional procedures I would <u>not</u> wish to be carried out straightaway without *my having the opportunity to consider them first.

Signature .....

Name (block capitals) .....

Address .....

(if not the patient) .....

Date .....

*Delete as appropriate

NOTES TO:

1. Doctors, Dentists

A patient has a legal right to grant or withhold consent prior to examination, investigation, treatment or operation. Patients should be given sufficient information, in a way they can understand, about the proposed procedure and the possible alternatives. Patients must be allowed to decide whether they will agree to the proposed procedure and they may refuse or withdraw consent at any time. The patient's consent to the procedure should be recorded on this form.

2. Patients

2.1 The doctor or dentist is here to help you. He or she will explain the proposed procedure and what the alternatives are. You can ask any questions and seek further information. You can refuse the procedure.

2.2 You may ask for a relative or a friend or a nurse to be present during the discussion.

2.3 Training health professionals is essential to the continuation of the health service and improving the quality of care. Your treatment may provide an important opportunity for teaching students or one or more members of staff under the supervision of a more senior member of staff. You may refuse to participate in such teaching sessions without this adversely affecting your care and treatment.

CONSENT FORM

APPENDIX A (2)

For sterilisation or vasectomy

Health Board .....
Hospital .....
Unit Number .....

Patient's Surname .....
Other Names .....
Date of Birth .....
Sex: *Male/Female

DOCTORS *(See notes on the reverse)*

TYPE OF OPERATION — STERILISATION OR VASECTOMY

(to be completed by doctor)

Please complete this part of the form

I confirm that I have explained the procedure and any anaesthetic (general/regional) required, to the patient in terms which in my judgement are suited to *his/her understanding.

Signature ..... Date ...../...../.....

Name .....
(block capitals)

PATIENT

1. Please read this form very carefully.
2. If there is anything that you don't understand about the explanation, 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 explanation, 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.
	■	that the aim of the operation is to stop me having any children and it is often impossible to reverse the effects of the operation.
	■	that *sterilisation/vasectomy can sometimes fail, and that there is a very small chance that I may become fertile again after some time.
	■	that any procedure in addition to that described on this form will only be carried out if it is immediately necessary and in my best interests and can be justified for medical reasons.
I have told	■	the doctor about any additional procedures I would <u>not</u> wish to be carried out straightaway without my having the opportunity to consider them first.
For vasectomy I understand	1.	that I may remain fertile or become fertile again after some time.
	2.	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.

Signature .....

Name (block capitals) .....

Address .....

Date .....

*Delete as appropriate

NOTES TO:

1. Doctors

A patient has a legal right to grant or withhold consent prior to examination, investigation, treatment or operation. Patients should be given sufficient information, in a way they can understand, about the proposed procedure and the possible alternatives. Patients must be allowed to decide whether they will agree to the procedure and they may refuse or withdraw consent to a procedure at any time. The patient's consent to a procedure should be recorded on this form.

2. Patients

2.1 The doctor is here to help you. He or she will explain the proposed procedure, which you are entitled to refuse. You can ask any questions and seek further information.

2.2 You may ask for a relative or a friend or a nurse to be present during the discussion.

2.3 Training health professionals is essential to the continuation of the health service and improving the quality of care. Your treatment may provide an important opportunity for teaching students or one or more members of staff under the supervision of a more senior member of staff. You may refuse to participate in such teaching sessions without this adversely affecting your care and treatment.

CONSENT FORM

APPENDIX A (3)

For procedure by a health professional other than a Doctor or Dentist

Health Board .....
Hospital .....
Unit Number .....

Patient's Surname .....
Other Names .....
Date of Birth .....
Sex: *Male/Female

HEALTH PROFESSIONAL *(See notes on the reverse)*

TYPE OF PROCEDURE PROPOSED (to be completed by health professional)

Please complete this part of the form

I confirm that I have explained the procedure proposed and such appropriate options as are available to the patient in terms which in my judgement are suited to the understanding of the patient and/or to one of the parents or guardians of the patient

Signature ..... Date ..../..../.....

Name of health professional ..... (block capitals)

Job Title of Health Professional .....

PATIENT/PARENT/GUARDIAN

1. Please read this form and the notes overleaf very carefully.
2. If there is anything that you don't understand about the explanation, or if you want more information, you should ask the health professional who has explained the procedure proposed.
3. Please check that all the information on the form is correct. If it is, and you understand the procedure proposed, then sign the form.

I am the *patient/parent/guardian

I agree ■ to what is proposed which has been explained to me by the health professional named on this form.

Signature .....

Name (block capitals) .....

Address .....

(if not the patient) .....

.....

Date .....

*Delete as appropriate

NOTES TO:

4. Health professionals, other than Doctors or Dentists

A patient has a legal right to grant or withhold consent prior to examination, investigation, treatment or operation. Patients should be given sufficient information, in a way they can understand, about the proposed procedure and the possible alternatives. Patients must be allowed to decide whether they will agree to the procedure and they may refuse or withdraw consent to a procedure at any time. The patient's consent to a procedure should be recorded on this form.

5. Patients

5.1 The health professional named on this form is here to help you. He or she will explain the proposed procedure and what the alternatives are. You can ask any questions and seek further information. You can refuse the procedure.

5.2 You may ask for a relative or a friend or another member of staff to be present during the discussion.

5.3 Training health professionals is essential to the continuation of the health service and improving the quality of care. Your treatment may provide an important opportunity for teaching students or one or more members of staff under the supervision of a more senior member of staff. You may wish to refuse to participate in such teaching sessions without this adversely affecting your care and treatment.

The Sidaway Case

The question of how much information and warning of risk should be given to a patient was considered by the House of Lords in the case of Sidaway v Gov of Bethlem Royal Hospital [1985] AC 871. Lord Bridge indicated that a decision on what degree of disclosure of risks is best calculated to assist a particular patient to make a rational choice as to whether or not to undergo a particular treatment must primarily be a matter of clinical judgement. He was of the further opinion that a judge might in certain circumstances come to the conclusion that the disclosure of a particular risk was so obviously necessary to an informed choice that no reasonably prudent medical man would fail to make it. The kind of case which Lord Bridge had in mind would be an operation involving a substantial risk of grave adverse consequences. Lord Templeman stated that there was no doubt that a doctor ought to draw the attention of a patient to a danger which may be special in kind or magnitude or special to the patient. He further stated that it was the obligation of the doctor to have regard to the best interests of the patient but at the same time to make available to the patient sufficient information to enable the patient to reach a balanced judgement if he chooses to do so.

The Moyes Case

The Sidaway case has now been commented on by a Scottish Court – see Moyes v Lothian Health Board (1990) SLT444. The principles set out in the Sidaway case were apparently accepted as representing the situation in Scotland. Lord Caplan was of the opinion that the Scots Law did not require that the informed consent of a patient had at all costs to be obtained. In his opinion, the extent and quality of any warning to be given to a patient was to be governed by medical criteria unless it could be established as necessary in reliance on the general duty to show care. The ultimate test remained whether the doctor had shown reasonable care for the safety of the patient. Recognition by the doctor of the adult patient's right to make decisions about the risks he incurs is essentially an aspect of his duty to take reasonable care for his safety.

APPENDIX C

EXAMPLES OF PROCEDURES WHICH HAVE RAISED CONCERN

Maternity Services

1. 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 early antenatal period, when any special wishes she expresses should be recorded in the notes, but of course the patient may change her mind about these issues at any stage, including during labour.

2. Decisions may have to be taken swiftly at a time when the woman's ability to give consent is impaired eg as a result of medication, including analgesics. If the safety of the woman or child is at stake the obstetrician or midwife should take any reasonable action that is necessary. If, in the judgement of the relevant health professional, the woman is temporarily unable to make a decision, it may be advisable for the position to be explained to her husband or partner if available, but his consent (or withholding of consent) cannot legally over-ride the clinical judgement of the health professional, as guided by the previously expressed wishes of the patient herself.

Breast Cancer

3. The usual principles of explaining a proposed procedure and obtaining the patient's consent should be followed in treating cases of breast cancer. Breast cancer does not normally require emergency treatment. The patient needs reassurance that a mastectomy will not be performed without her consent, and that unless she has indicated otherwise the need for any further surgery will be fully discussed with her in the light of biopsy and other results. This is a particular case of the principle, set out in para 13 of the Note of Guidance, that consent to an initial procedure does not necessarily imply consent to a further procedure.

Tissue and Organ Donation: Risk of Transmitted Infection

4. Where tissues or organs are to be transplanted, the recipient should be informed at the time when consent to operation is obtained of the small, but unavoidable risk of the transplant being infected. Further guidance is available in Circular SHHD/CAMO(90)3, "HIV Infection, tissue banks and organ donation", which was issued to Directors of Public Health and CAMOs on 23 July 1990.

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