

What is informed consent?

Informed consent is the process whereby a patient makes a voluntary decision about their medical care with knowledge and understanding of the benefits and potential risks involved.^{1,2}

A patient should only agree to the proposed treatment or procedure if he or she has been provided with sufficient information including the benefits, associated risks and alternative management options, so they are able to make an appropriate decision about their own healthcare.³

Subsequently, a general practitioner (GP) should only undertake a medical procedure or provide treatment to a patient who has given their consent. Failure to obtain a patient's consent may increase the risk of medico-legal action.^{4,5}

What constitutes valid consent?

For consent to be valid, it is crucial that:

- consent is provided voluntarily by the patient
- patients providing their consent are lawfully competent to do so
- patients are given sufficient information so they can evaluate the benefits and associated risks before providing their informed consent⁶
- consent be given with an understanding of the material risks involved in the proposed procedure/treatment.

What does the term 'material risk' mean?

Essentially, a risk is material if:

- a 'reasonable' person (in the same position) if warned of the risk is likely to attach significance to it, or
- if the medical practitioner is or should reasonably be aware that the particular patient, if warned of the risk, would be likely to attach significance to it.⁷

Therefore, a known risk should always be disclosed to the patient when:

- an adverse outcome is common, even if the detriment is minimal
- an outcome is severe, even if its incidence is rare.

Given the above, it is paramount that medical practitioners proposing medical treatments or procedures, inform their patients of the 'material risks' associated with the suggested treatment/procedure so they are able to make an informed decision about their healthcare.

Is it necessary to discuss the risks of simple procedures?

Where the danger of risks is commonly appreciated to be rare, disclosure need not be exhaustive and will depend on what is material to the particular patient.⁸

Further information and advice regarding informed consent can be accessed directly from your medical indemnity insurer.

Pertinent medico-legal cases relating to informed consent are listed below

- **Marion's case**
Limits the types of medical treatment that parents can consent to on behalf of their children – www.lawlink.nsw.gov.au/lrc.nsf/pages/ip24chp01
- **Gillick's case**
Children and competence to consent to medical treatment – www.bailii.org/uk/cases/UKHL/1985/7.html
- **Rogers v Whitaker**
Duty to provide information to patients when seeking consent – www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/high_ct/175clr479.html?stem=0&synonyms=0&query=%20Rogers%20v%20Whitaker

Key advice for GPs – informed consent

- The information in this document is to be used as a guide only. You may wish or need to contact your medical indemnity insurer in some cases for specific advice.
- Medico-legal risks are real. Obtaining patient consent is both essential to good medical practice and a legal necessity. GPs have a duty to obtain consent from patients for a medical treatment or procedure.⁵
- The communication process between GPs and patients is a professional, ethical and a legal requirement, represented in statutes and case law.
- Informed consent is an extension of good communication techniques and helps establish doctor/patient rapport.³
- A medical treatment or procedure refers to any medical or surgical procedure, operation or examination and any prophylactic, palliative or rehabilitative care normally carried out by, or under the supervision of, a registered medical practitioner.⁹
- Patients have a right to information and to be actively involved in decisions affecting their health and wellbeing.³
- Your patient must have the legal capacity to be able to provide consent – for example, a minor or person with cognitive impairment may not have such capacity. Where appropriate, a parent or legal guardian may provide consent on behalf of your patient.⁶
- Generally, a parent or guardian of a child or minor (under the age of 18) has the authority to consent to medical treatment or procedures, provided they are in the best interest of the child.
- Legally, in Australia the age at which a person is considered an ‘adult’ is 18. However, in some circumstances a child or young person can consent to their own medical treatment provided they have intelligence to enable them to fully understand what is proposed. Further information can be accessed at www.racgp.org.au/afp/201103/201103bird.pdf
- Where there are concerns about a patient's competence, medical practitioners must assess the patient's ability to understand the medical information in order to determine whether the patient is competent to decide on the proposed medical treatment or procedure.⁶
- All states and territories have legislation that explains how to obtain consent from patients who lack the mental capacity to provide consent on their own behalf.⁶
- Implied consent is when a patient passively cooperates with the treatment or procedure, such as taking medication or giving blood.^{11,12}
- Verbal consent is where a patient states their consent to a procedure verbally. This type of consent is adequate for minor procedures, such as the suture of minor lacerations and vaccinations.¹²
- For significant elective or cosmetic treatments and procedures, allow the patient time to digest the information you have provided. Ask the patient to read the written information at home and return for a second consultation, at which the time the consent process may be finalised.
- Encourage questions, as this provides a GP with a better overview of the patient's understanding of the information. It can also stimulate further discussion; never assume what the patient knows or understands.
- It is crucial that the information you provide is appropriate to the patient's circumstances, education, personality, expectations, fears, beliefs, values and cultural background.
- Use plain, non-technical language to communicate information about proposed procedures and treatments to patients.
- Use a skilled interpreter if needed.
- Document your discussion as specifically as possible in your patient's medical record.

1. Australian Medical Council. Good medical practice: a code of conduct for doctors in australia. 2009
2. The Royal Australian College of General Practitioners. The standards for general practice (4th edition). 2010
3. National Health and Medical Research Council. General guidelines for medical practitioners on providing information to patients. 2004.
4. Bird S. Discussing benefits and risks with patients. Australian family physician. 2004.
5. Gogoa A, Clark R, Bismark M, Gruen R and Studdert D. When informed consent goes poorly: a descriptive study of medical negligence claims and patient claims. Medical Journal of Australia. 2011
6. Bird S. Does my patient have the capacity to consent to treatment. Australian Family Physician. 2004.
7. Rogers vs Whitaker (1992) 175 CLR 479
8. The Medical Insurance Group of Australia. Informed consent. 2007.
9. Office of the Public Advocate. The law handbook – consent to medical treatment. 2011
10. Bird S. Consent to medical treatment: the mature minor. Australian Family Physician. 2011.
11. NSW Health. Consent to medical treatment – patient information 2005.
12. ACT Health. Consent to treatment procedure. 2011