

5. Who should obtain consent?

5.1. Who is legally responsible for obtaining a valid consent?

In general, the Medical Practitioner under whose care a patient is admitted (either as a public or private patient) and/or the Health Practitioner who performs the procedure will have, or will share, legal responsibility for the overall care of the patient. Where the Medical Practitioner recommends or advises that a patient undergo an operation, procedure or treatment, that Medical Practitioner has responsibility for obtaining a valid consent. This includes ensuring that the patient has sufficient, appropriate and relevant information and advice to enable the patient to make their own decision regarding the proposed operation, procedure or treatment.

Often, the Medical Practitioner who recommends a procedure does not perform the procedure. For example, the Admitting Medical Officer may delegate the task of performing the procedure to another Medical Practitioner or Health Practitioner, in accordance with hospital protocol.

Both the Admitting Medical Officer and the Medical Practitioner or Health Practitioner who ultimately performs the procedure have legal and professional responsibilities to the patient to obtain a valid consent. The extent of the legal responsibility of each practitioner will vary according to the facts and circumstances of each situation considering the complexity and seriousness of the procedure or treatment.

Ultimately, before performing the procedure or treatment, the Medical Practitioner or Health Practitioner performing the procedure or administering the treatment needs to be satisfied that:

- the appropriate procedure or treatment has been requested for the patient; and
- the patient has been provided with the necessary information regarding the material and inherent risks of the procedure or treatment for a valid consent.

5.2. Other Health Practitioners obtaining consent

In most cases, the Health Practitioner who will perform the procedure, or provide the treatment should obtain or confirm the patient's consent for that procedure or treatment. Health Practitioners such as Nurse Practitioners and Midwives, and allied health professionals perform procedures and some examinations as part of their usual scope of practice, such as central line insertion, lumbar puncture, and abdominal paracentesis. Any Health Practitioner who is appropriately experienced and trained to perform procedures within their scope of practice must obtain a valid consent prior to performing those procedures. Consent may be implied from the patient acquiescing to the procedure. However, **the criteria for obtaining a valid consent must still be met**, the procedure must still be explained to the patient and it is advisable for a written note to be made in the patient's Health Record documenting this.

In cases where treatment is being provided by Health Practitioners other than Medical Practitioners, including *Significant procedures or treatments requiring written consent* (section 4.5), those Health Practitioners may obtain written consent and use the consent forms in this Consent Manual. In these circumstances, references in this Consent Manual and on the consent forms to Medical Practitioners should be read as also applying to Health Practitioners more broadly.

Health Practitioners must also obtain written consent where other policies and procedures mandate a written consent, for example, Sexual Assault Forensic Examinations. Written consent may also be considered where the Health Practitioner considers the risks of the procedure are material or the circumstances warrant written consent.

In some cases, an Admitting Medical Officer may inform the patient and obtain verbal consent for a procedure or treatment that will be performed or provided by a Medical Practitioner but ask that a Nurse or Midwife or administrative staff have the patient complete and sign the consent form. In these instances, the Admitting Medical Officer is still required to complete the 'Provision of Information to Patient' section on the consent form. This practice should not be encouraged, and it should be documented that the Nurse or Midwife or administrative staff member is not seeking consent but rather having the patient confirm the consent given to the Admitting Medical Officer.

Providing information

All Health Practitioners are under a general duty to exercise reasonable care where they provide any advice or information to a patient. In circumstances where information is sought from a Health Practitioner who is not the Medical Practitioner responsible for ensuring that the patient is appropriately informed about a procedure and seeking consent, the Health Practitioner should ensure that any additional advice is accurate and documented in the patient's Health Record.

If a Health Practitioner becomes concerned that the patient has not been provided with enough information about the procedure, operation or treatment to have made a valid decision to undergo that operation, procedure or treatment, the Health Practitioner should take reasonable steps to ensure the patient receives the necessary additional information from the treating Medical Practitioner.

5.3. Can the task of obtaining a valid consent be delegated to a Junior Medical Officer?

The task of providing the necessary information to patients to obtain a valid consent may be delegated by a senior Medical Practitioner to a Junior Medical Officer in certain circumstances, having regard to:

- the respective legal obligations of hospitals (independently and through its staff) and Medical Practitioners arising from the admission status of patients,
- the rights and expectations of patients
- the appropriate use of Medical Practitioner time and hospital resources.

An Admitting Medical Officer may delegate the task of obtaining a valid consent to a Junior Medical Officer in the following circumstances:

- the Admitting Medical Officer is satisfied that the Junior Medical Officer has the necessary skills and experience to inform the patient and obtain valid consent. Ideally, the Junior Medical Officer should have, on previous occasions and under the supervision of an Admitting Medical Officer, competently undertaken the task of obtaining consent from a patient in similar circumstances
- the Junior Medical Officer does not object to undertaking the task. Junior Medical Officers have a responsibility to refuse to undertake the task if they do not consider they have sufficient skill or experience. Decisions in this regard must be respected
- the Junior Medical Officer understands the procedure and can explain the risks and benefits and has ideally previously performed the procedure
- the procedure is routine.

Public patients should know which Medical Practitioner the hospital has arranged to be primarily responsible for their care. The issue of which Medical Practitioner will be performing the procedure should be canvassed with the patient at the time of providing information and obtaining consent. In some circumstances, the Medical Practitioner who will be performing the procedure will not have been nominated by the hospital at the time of obtaining consent from the patient. In this situation, the hospital should take steps to advise the patient of the name and position of the Medical Practitioner once such nomination occurs.

5.4. Admission from a Medical Practitioner's private rooms

Prior to admission to a public hospital, a patient who is seen by an Admitting Medical Officer in their private rooms should be provided with the necessary information about the procedure, including information about the material risks involved. The Admitting Medical Officer should also satisfy themselves as to the other requirements for obtaining a valid consent.

The relevant sections of the consent form should be completed by the Admitting Medical Officer and the form provided to the patient. The patient can give consent and complete the form either at the same time or prior to admission into hospital. This arrangement will apply irrespective of whether the patient is to be admitted as a public or private patient. However, the following points should be noted:

- In some cases, it may be necessary for information about the procedure to be provided to the patient and for the consent to be obtained in the Medical Practitioner's private rooms, for example, where an interpreter has been in attendance. Where this occurs, care should be taken to ensure that the patient is not pressured or rushed into signing the form
- Where the patient wishes to have more time to consider the proposed treatment, the Admitting Medical Officer should sign the relevant parts of the form and provide the form to the patient who can complete it later. In this case, the patient should be made aware that the procedure will not be undertaken until a completed consent form is produced

Hospital admissions staff should be aware that admission may be arranged through the Admitting Medical Officer's private rooms, without the patient having been seen at the hospital. This situation may arise in the case of recurring conditions or long-term treatment programs. In this case, the information will be provided to the patient in the Admitting Medical Officer's private rooms and consent will be sought at that time.

Admitting Medical Officers should consider, having regard to the nature of the proposed procedure and the risks involved, whether consultation with another Medical Practitioner is required for the patient. For example, where the risks of anaesthesia need to be explained by the attending anaesthetist or where the Admitting Medical Officer is not actually performing the procedure, the Medical Practitioner undertaking the procedure may need to consult with the patient.

There may be circumstances where the Admitting Medical Officer may request another senior Medical Practitioner to obtain consent from a private patient, including where the Admitting Medical Officer is unable to obtain consent personally or where the procedure is required as a matter of urgency. The Admitting Medical Officer must be satisfied that the delegated Medical Practitioner has the necessary skills and experience to inform the patient and obtain a valid consent and the delegated Medical Practitioner should agree to undertake the task.

5.5. Admission through the hospital emergency or outpatient department

Where a patient is admitted through the emergency department, the Admitting Medical Officer or Junior Medical Officer involved in admitting the patient should inform the patient of the proposed treatment, seek consent and complete the consent form at the pre-operative consultation. The necessary information should be provided, and a valid consent should be obtained and documented before any pre-operative medication being given and before the operation, procedure or treatment.

Subject to the criteria in section 5.3 being met, outpatients being booked for elective procedures/treatments may be informed by a Junior Medical Officer who shall complete the patient consent form and ensure that patient consent is obtained. Such patients should be advised by the Junior Medical Officer that they will not necessarily be carrying out the procedure when the patient is admitted.