

Appendix 7 – Consent Guide for Medico-Legal Requests

Acknowledgment:

This guide has been adapted from a check list provided by the Northern NSW Local Health District (2013).

Type of request	Notes
<i>The section references refer to sections contained within the NSW Health Privacy Manual for Health Information.</i>	
Coroner	Reference: Section 11.3.5
Continuing patient care	Reference: Section 11.2.1
Child Death Review Team – NSW	Reference: Section 11.3.10
Deceased patient	Reference: Section 5.6
Deceased patient – Compassionate grounds	Reference: Section 11.2.9
Defence Force Recruitment	Non-health related purpose, therefore consent is required.
Family and Community Services (FACS) Chapter 16A of <i>Children and Young Persons (Care and Protection) Act 1998</i>	All Chapter 16A requests must be processed through the Central Contact Person for the facility or health service. All responses must be written using the 16A template. References: NSW Health policies on Child Protection and Wellbeing – Information Exchange, and Privacy Manual for Health Information, Section 15.3
**Health Care Complaints Commission	Reference: Section 11.2.8, Section 11.3.7
Insurance	Scanned or photocopies of consent normally acceptable. Reference: Section 11.2.2
Notice of Claim (NOC)	An NOC must be accompanied by a valid consent. In most cases, the medico-legal officer processing the NOC will need to contact the respondent's insurer or legal representative, and advise that a valid consent must be forwarded from the patient that they are seeking information about. Do not confirm or deny whether the person has attended hospital, until the consent has been submitted.
Out of Home Care – Family and Community Services (FACS)	Need to make sure consent is from the 'authorised representative', in this case, FACS must provide a copy of the Court Order stating their 'parental rights'. Reference: Section 5.6 – authorised representative
Out of Home Care – Other person/body/ agency (Not FACS)	Need to make sure consent is from the 'authorised representative', in this case, where FACS have granted another body or agency parental rights, a copy of the court order must be produced in conjunction with a valid consent to release information signed by the nominated FACS Officer. Reference: Section 5.6 – authorised representative.
Patient/Personal	Reference: Section 12.
Police (expert certificates, medical statements)	Reference: Section 11.2.7 The need for consent depends on the circumstances. The need to assist law enforcement agencies with their investigative work must be balanced with the need to protect patient privacy. Section 11.2.7 provides guidance on how to achieve this balance.
Police (serious crime and fraud, blood alcohol test results, missing persons, public risk, forensic evidence, foreign bodies)	Such requests should be discussed with your Manager. Reference: Section 11.2. and Section 11.3.4.

Type of request	Notes
<i>The section references refer to sections contained within the NSW Health Privacy Manual for Health Information.</i>	
Registrar of Births, Deaths and Marriages	Consent is not required when validating or seeking missing birth/death information only. Reference: Birth registration, forms and related legislation (PD2005_509).
Research/Clinical Trials	The need for consent will depend on the terms of the research ethics approval. Reference: Section 11.2.4.
Solicitor	The need for consent will depend on the circumstances, for example, whether the solicitor is acting on behalf of a staff member, or on behalf of the patient. Reference: Section 15.6.
Subpoena (including police)	Reference: Section 11.3.6.
Worker's Compensation	Non-health related purpose, therefore consent is required.
Worker's Compensation - billing purposes	Purpose is 'directly related'. Reference: Section 11.2.11

*** Consent: For a consent for release of information to be valid, it must:**

- be in writing, either on letterhead, or if via email, it must include a detailed signature block. The consent may be a photocopy or scanned version of the original document. If there are reasonable grounds to doubt the authenticity of the document, an original copy of the consent may be sought. (see Section 11.2.2)
- clearly state the name of the individual authorising the release
- clearly state to whom they are authorising the release
- be dated within a suitable timeframe of the original request being submitted, either within 3 months for a specific or 'one off' disclosure, or within 12 months (see Section 5.4.1).

**** Investigative agencies:**

Health Care Complaints Commission is an 'investigative agency'. The rules for disclosure to an investigative agency within NSW and within all jurisdictions within Australia are the same (see Section 11.3.7).

It is more important to establish whether the purpose for disclosure is authorised. Requests from Commonwealth agencies, organisations or bodies are generally authorised (see Sections 11.2.6 and 11.2.8).