

When do health professionals need consent from patients?

1. Before you examine, treat or care for competent adult patients you must obtain their consent.
2. Adults are always assumed to be competent unless demonstrated otherwise. If you have doubts about their competence, the question to ask is: “can this patient understand and weigh up the information needed to make this decision?” Unexpected decisions do not prove the person is incompetent, but may indicate a need for further information or explanation.
3. Patients may be competent to make some health care decisions, even if they are not competent to make others.
4. Giving and obtaining consent is usually a process, not a one-off event. Patients can change their minds and withdraw consent at any time. If there is any doubt, you should always check that the patient still consents to your caring for or treating them.

Who is the right person to seek consent from a patient?

5. It is always best for the person actually treating the patient to seek consent. However, you may seek consent on behalf of colleagues if you are capable of performing the procedure in question, or if you have been specially trained to seek consent for that procedure.

What information should be provided when seeking consent?

6. Patients need sufficient information before they can decide whether to give their consent: for example information about the benefits and risks of the proposed treatment or course of action, and appropriate alternatives. If a patient is not offered as much information as they reasonably need to reach an informed decision, and in a form they can understand, their consent may not be valid.

Is the patient's consent voluntary?

7. Consent must be given voluntarily: not under any form of duress or undue influence from health professionals, family or friends.

Does it matter how the patient gives consent?

8. No: consent can be written, oral or non-verbal. A signature on a consent form does not itself prove the consent is valid – the point of the form is to record the patient's decision, and also increasingly the discussions that have taken place.

Refusals of treatment

9. Competent adult patients have the right to refuse treatment, even where it would clearly benefit them. A competent pregnant woman may refuse any treatment, even if this would be detrimental to the foetus.

Mental Health Legislation

10. Mental health legislation provides the possibility of treatment for a person's mental disorder or its complications without their consent. This legislation does not give power to treat unrelated physical illness without consent.

Adults who are not competent to give consent

11. No-one can give consent on behalf of an adult who is not deemed competent.

However, you may still treat such a patient if the treatment would be in their best interests. 'Best interests' go wider than best medical interests, to include factors such as the wishes and beliefs of the patient when competent, their current wishes, their general well-being and their spiritual and religious welfare. People close to the patient may be able to give you information on some of these matters. Where the patient has never been competent, relatives, carers and friends may be best placed to advise on the patient's needs and preferences.

If people no longer have capacity but have clearly indicated in the past that they would wish to refuse such treatment in the circumstances in which they now find themselves, (an "advance refusal"), the refusal must be accepted.

Can children give consent for themselves?

12. Before examining, treating or caring for a child, you must seek consent.

Young people aged 16 and 17 are presumed to have the competence to give consent for themselves.

Younger children who understand fully what is involved in the proposed procedure can also give consent (although their parents should ideally be involved).

In other cases, someone with parental responsibility must give consent on the child's behalf, unless they cannot be reached in an emergency.

If a competent child consents to treatment, a parent cannot over-ride that consent. Legally, a parent can consent if a competent child refuses, but it is likely that taking such a serious step will be rare.

This summary cannot cover all situations.

For more detail, consult the Reference Guide to Consent for Examination, Treatment or Care, available at www.dhsspsni.gov.uk.



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