Informed consent

In most instances, treatment cannot be provided to a patient without first obtaining their informed consent. This factsheet provides a broad overview of what informed consent is, what to do when a patient lacks capacity to consent to medical treatment, and special circumstances you may encounter.

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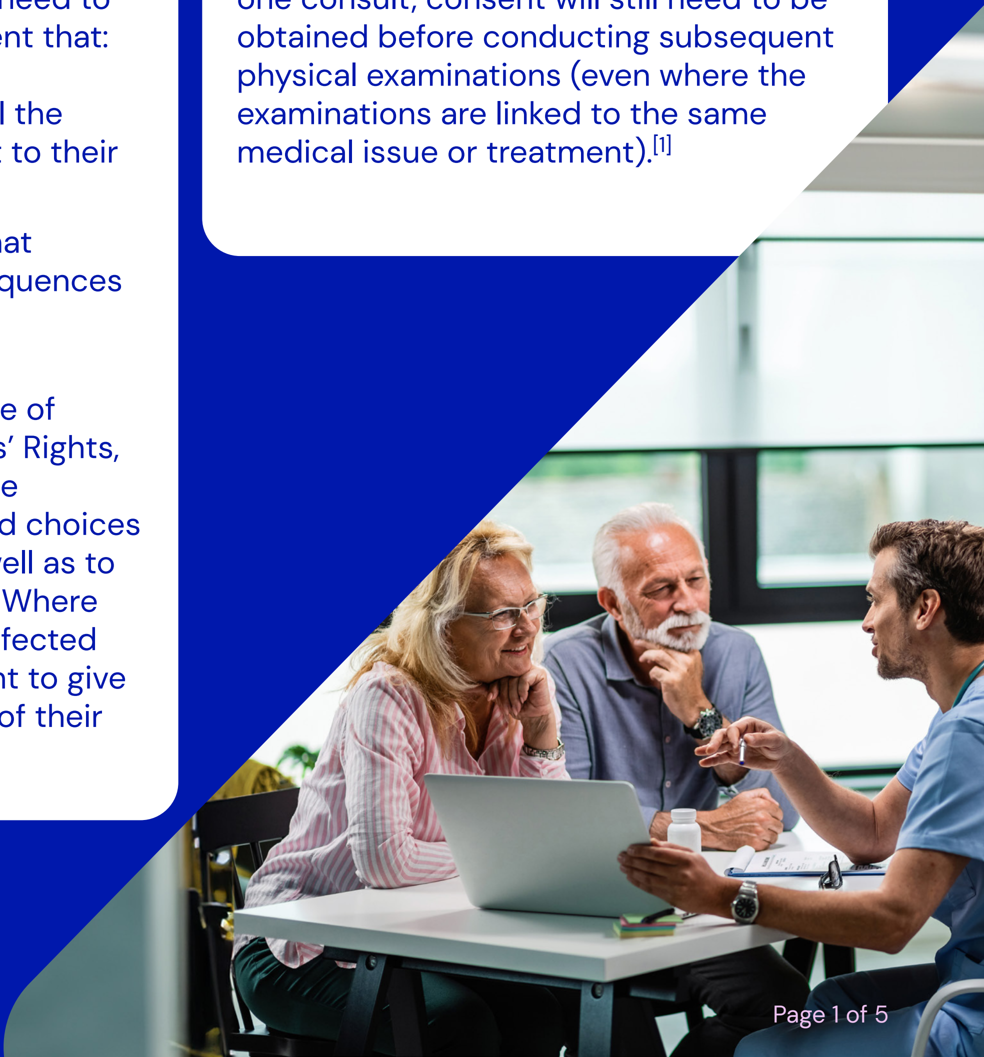
What is informed consent?

Informed consent is a process by which a treating doctor obtains their patient's permission to provide treatment. In most situations the doctor undertaking the treatment or procedure will need to ensure before providing treatment that:

1. the patient has received all the information that is relevant to their decision; and
2. the patient understands that information and the consequences of their decision.

Under Rights 6 and 7 of the Code of Health and Disability Consumers' Rights, all patients have the right and are presumed able to make informed choices and give informed consent, as well as to withdraw consent to treatment. Where a person's decision-making is affected or diminished, they have the right to give informed consent to the extent of their decision-making ability.

Consenting to treatment is an ongoing process, meaning that informed consent may need to be obtained not just at the outset of treatment but at various stages throughout. For example, if a patient has consented to a physical examination in one consult, consent will still need to be obtained before conducting subsequent physical examinations (even where the examinations are linked to the same medical issue or treatment).[1]



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Ensuring your patient is informed

Patients must be provided with all relevant information needed to make an informed decision about treatment. As set out under Right 6 of the Code, this should include:

a. an explanation of the patient's condition; and
b. an explanation of the options available, including an assessment of the expected risks, side effects, benefits, and costs of each option; and
c. advice of the estimated time within which the services will be provided; and
d. notification of any proposed participation in teaching or research, including whether the research requires and has received ethical approval; and
e. any other information required by legal, professional, ethical, and other relevant standards; and
f. the results of tests; and
g. the results of procedures.

It will be important if the patient expresses disagreement or uncertainty with the proposed treatment to advise the patient of their right to seek a second opinion, and if the proposed treatment is new, or experimental, or lacks scientific evidence, you will need to explain this to the patient.

Importantly, patients should be given reasonable time to consider the information provided before making their decision.

Effective communication is key to ensuring the information is understood. As a general rule doctors should be mindful of being clear, accurate and upfront, minimising medical jargon, and allowing time for their patient to ask any questions they may have (to which honest and accurate answers must be given). Patients may benefit from also being provided a written summary of the information, or with brochures or links to websites, but any written material should not be provided as a substitute for direct communication with the patient (whether in person, or virtually).

The patient's cultural, religious and social needs, and their values and beliefs should be taken into account (see Right 1 of the Code). These can inform what information may be of particular importance for the patient to know, and have a bearing on how the information is relayed. Where there are language barriers, an interpreter may need to be engaged.[2]

It may be appropriate for persons other than the patient to be involved in the informed consent process. The doctor may, for example, require further information from another health practitioner, or the patient may wish to discuss the information with someone close to them. As the patient may not be aware they can involve others in the process, it is good practice to ask whether they wish to do so, particularly where the patient is having difficulty making decisions about their care. It is important however to obtain the patient's confirmation that the decision is theirs.

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Delegation of care

On occasion the doctor who obtains the patient's informed consent may not be the doctor who treats the patient, for example if the consenting procedure is delegated to another health practitioner. This is something which should be discussed with the patient. Careful consideration should also be given to factors such as the patient's views on delegation, the nature of the treatment or intervention, and the skills and experience of the delegate. (Further information on delegation can be found in **MCNZ's statement here**).

Documenting discussions

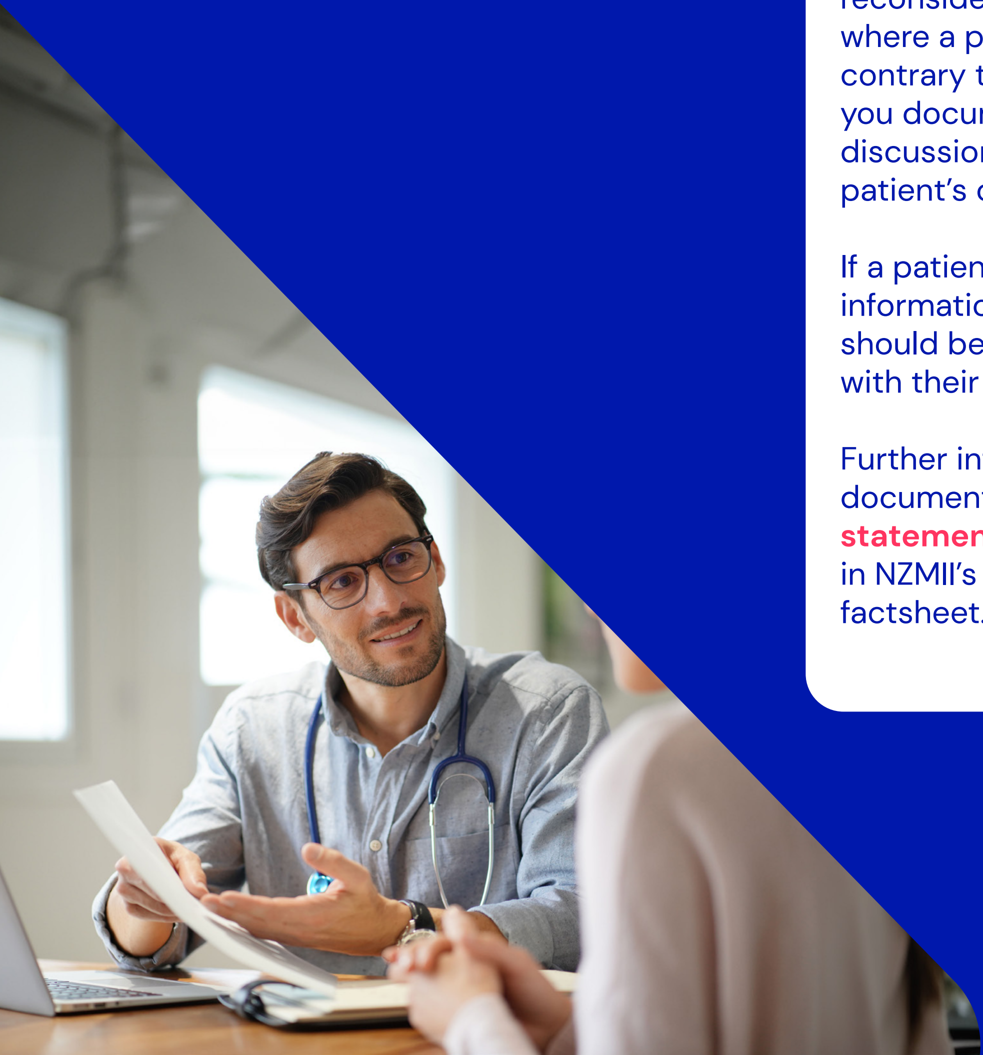
Discussions during the consent process should be recorded clearly and accurately in the patient's clinical notes and must include:

a. the information that was discussed
b. any specific risks that were highlighted
c. any request or concerns expressed
d. any decisions made and the reasons for them

If you consider your patient is making a decision which is not in their best interests you should explain your concerns and describe the possible consequences of their decision, and if possible, allow the patient time to reconsider. It is particularly important where a patient makes a decision contrary to their best interests that you document the decision and the discussion which preceded it in the patient's clinical notes.

If a patient should decline to receive information about their treatment, this should be recorded in their notes, along with their reasons for declining.

Further information regarding documentation can be found in MCNZ's **statement on Informed Consent**, and in NZMII's **Maintaining patient records** factsheet.



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Lack of capacity and informed consent

The starting point is that a person is presumed competent unless established otherwise. Coles Medical Practice in New Zealand provides that a person lacks capacity if they are unable to:

- understand the nature and purpose of a particular decision and appreciate its significance for them
- retain the relevant essential information for the time required to make the decision
- use or weigh the relevant information as part of the process of making the decision and considering the consequences of the possible options (including the option of not making the decision)
- communicate their decision, either verbally, in writing, or by some other means.

If there are reasonable grounds for determining that a patient lacks capacity to make decisions about their care, contact should be made with whoever is legally authorised to make decisions on the patient's behalf, such as a legal guardian or the person nominated under the patient's Enduring Power of Attorney for Personal Care and Welfare. (For further information on EPAs see NZMII's **Enduring Power of Attorneys and Welfare Guardians** factsheet). Consideration should also be given to the patient's advance directive, if they have one. (See NZMII's **Advance Directives** factsheet).

If there is no one authorised to make decisions on the patient's behalf, under Right 7(4) of the Code treatment may be provided so long as:

a. it is in the patient's best interests; and
b. reasonable steps have been taken to ascertain the views of the patient; and
c. having ascertained the patient's views you believe on reasonable grounds that the treatment is what the patient would have wanted if they were able to decide for themselves; or
d. if you have been unable to ascertain the patient's views, you have taken into account the views of others who have an interest in the patient's welfare.

It would be sensible also to discuss the treatment with an appropriate colleague before proceeding. The above should be clearly recorded in the patient's clinical notes.

Lifesaving treatment

Where treatment is time-critical it may not be practical or possible to obtain the patient's informed consent. In these circumstances, the doctor should act in accordance with good medical practice and what is in the patient's best interests.

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When a patient is anaesthetised

Sometimes a patient who is under anaesthesia requires further investigations or treatment outside of what they have consented to. This may mean that the treatment needs to be deferred. However if the situation is urgent, this may not be possible. Whether treatment should proceed or be deferred is a matter of clinical judgment, with the primary focus being what is in the patient's best interests.

If treatment is to proceed, where possible the proposed treatment should be discussed with an appropriate colleague. Those discussions and the decision should be recorded in the patient's clinical notes. It will be important too to discuss any further investigations or treatment with the patient at the earliest opportunity.

Special circumstances

MCNZ has helpfully provided summary guidance in its Informed Consent statement for special circumstances that may arise when obtaining informed consent. These include when care is provided in a teaching environment, participates in research, or is enrolled in an immunisation or screening programme, and where a doctor seeks a declaration or Court order because there is disagreement about treatment. A link to that part of the statement is **here**.

Two further special circumstances are identified, which have also been addressed in NZMII factsheets:

- When your patient is a child or adolescent: see NZMII's **Informed Consent of Children** factsheet.
- When bodily parts or bodily substances are taken from a patient: see NZMII's **The collection and use of tissue and body parts and informed consent** factsheet.

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[1] An example of this is HDC Case 20HDC02087, where the treating doctor failed to obtain consent from his patient for a post-operative physical examination (**www.hdc.org.nz/decisions/search-decisions/2024/20hdc02087** – see paragraphs 26 – 32).

[2] See fn 1 of MCNZ's statement Informed Consent: Helping patients make informed decisions about their care for further guidance regarding interpreters.

NZMII are here to help!

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