

Understanding Informed Consent

The most important goal of informed consent, although the specific definition varies from state to state, is that the patient has an opportunity to be an informed participant in a health care decision, including the purpose, procedure, potential risks and benefits, and options or alternative treatments and no treatment.

Besides the benefit of lowering the liability risk by using an informed consent, it can possibly prevent claims that rise to a cause of action for battery if you treat a patient without getting their consent first. How do you ensure valid consent?

There are several things that the health care provider can do to ensure that the patient's consent is valid:

- The actual person who will be performing the procedure should obtain the consent and that provider should have a full understanding of the patient's medical history.
- The dentist should ensure that the patient is legally and mentally capable of giving consent.
- The dentist should not coerce the patient into giving consent.
- The patient must consent to a specific procedure, and generally, the health care provider cannot go further than the scope of that procedure unless the patient was so informed of the possibility, such as cases of treatment under sedation.
- The health care provider must disclose sufficient information to the patient, such as the nature and purpose of the procedure, the probable risks and benefits, alternative treatments and the risks and benefits thereof, unusual but serious risks, such as death and the consequences of refusing the treatment.
- The patient must be given an opportunity to ask questions and think about the information.
- The dentist must inform the patient he or she has the experience and training to perform this treatment.
- The dentist must provide information to the patient regarding a specialist providing this treatment as an option.
- Risks that are too commonly known to the reasonable person or too remotely possible need not be told to the patient. For example, you do not need to inform a reasonably healthy patient the risk of an injection is death due to being such a remote possibility. (1)
- In cases where the patient waives his or her right to be informed by requesting not to be informed of any risks, it must be heavily documented, or the dentist should refuse to treat.
- There are many “patient set-ups” that may occur:

1. Graskemper, Joseph, *Professional Responsibility In Dentistry: A Practical Guide To Law And Ethics*, Wiley-Blackwell, 2011 P. 52.

2. Ibid. p.53.

3. Graskemper, Joseph, *Professional Responsibility In Dentistry: A Practical Guide To Law And Ethics*, Wiley-Blackwell, 2011. P. 58.

4 . Graskemper, Joseph, *Professional Responsibility In Dentistry: A Practical Guide To Law And Ethics*, Wiley-Blackwell, 2011. P. 56.

- “Whatever you say, you’re the doctor”
- “Just do the best you can. I trust you.”
- “You don’t have to tell me. I had this done before”
- “You are such a good dentist; I trust you to do what is right” (2)

Types of Consent: Express and Implied

Informed consent may be either "express" or "implied." Express consent is given in writing or orally. If a patient's consent is written, it should include the dentist's name, procedure, alternate treatments, and consequence of not doing treatment, questions, time, date, and witness to signature to consent. Consent not given by a patient in writing or orally but understood from the circumstances surrounding the procedure or treatment at issue is known as implied consent. Consent may be implied when, for instance, a patient presents him or herself for a relatively simple, non-invasive procedure and does not make any objection when the procedure begins. (3)

Obtaining Consent from Incompetent Individuals and Minors

When a competent adult seeks dental treatment, the process of obtaining informed consent may seem relatively easy. However, in situations where mentally disabled or impaired individuals or children need treatment, the ability to obtain informed consent becomes more difficult. In these situations, serious questions arise concerning who is able to give informed consent for those individuals.

In most cases, a mentally disabled person has an appointed guardian authorized to make medical decisions and give informed consent for that individual. Dentists need to make sure that when they obtain informed consent for incompetent individuals, they have obtained it from the correct person or persons.

In most situations, parents can give informed consent for treatment for their minor children. However, some states allow young adults under eighteen to play a more active role in their dental care, including the process of informed consent. Applicable laws vary from state to state. Not every teenager is capable, however, of making informed consent decisions. Instead, most states focus on "mature minors" capable of understanding the nature and consequences of treatment. In those states, such young adults may be able to provide consent without consulting with their parents.

The dentist must make a good faith effort to obtain a valid informed consent when dealing with children and those whose incapacity may hinder their understanding of the procedure and give a valid consent. The question to ask is, “Does the patient’s perceived incapacity compromise his or her decision making” (4)

1. Graskemper, Joseph, *Professional Responsibility In Dentistry: A Practical Guide To Law And Ethics*, Wiley-Blackwell, 2011 P. 52.

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4 . Graskemper, Joseph, *Professional Responsibility In Dentistry: A Practical Guide To Law And Ethics*, Wiley-Blackwell, 2011. P. 56.