

10 November 2017

Dear practitioner

Consultation on the informed consent practice standard

The Dental Council (the Council) has reviewed its *informed consent* practice standards and as a result has developed a single draft practice standard which will replace the two existing practice standards, and apply to all oral health practitioners. The Council currently has two different informed consent practice standards, one applying to dentists and dental specialists, and the other applying to all other oral health practitioners.

We are now seeking your feedback on the draft informed consent practice standard. We welcome your views and have provided consultation questions on p5 of the consultation document to assist your response. The draft informed consent practice standard is provided as Attachment 1.

The consultation process provides practitioners and others with an interest in this area with an opportunity to have their say. The Council values all feedback received during its consultation processes and all feedback received informs its view as it works towards a final decision.

In accordance with the Council's guidelines on consultation, we have invited comment from all practitioners, professional associations and societies, the Ministry of Health, district health boards, educational institutions, and other organisations with an interest in this area. The consultation document is also available on our website, with a similar invitation to comment.

Submissions

All submissions received will be published on the Council's website shortly after receipt, and will remain there as a public document. For submissions made by individuals, only your name and profession, if you are a registered health practitioner, will be published on the Council's website. All personal contact details will be removed from your submission.

As this is a public consultation, "in confidence" information will only be accepted under special circumstances. Please contact us before submitting material in confidence. The Council holds the right not to publish any derogatory or inflammatory submissions.

The submission period closes by end of business on **5 February 2018**.

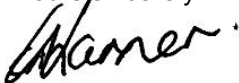
Send your responses to:

Dental Council
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Email: consultations@dcnz.org.nz

I look forward to receiving your views on the draft Informed consent practice standard.

Yours sincerely



Marie Warner
Chief Executive

Consultation document on the draft Informed consent practice standard

Issued: 10 November 2017

Submission closing date: 5 February 2018

Draft Informed consent practice standard

1. Introduction

The review of the Council's *Informed consent* practice standards [March 2005], began in July 2017 with the consideration of the Council's current practice standards and other standards or guidelines related to informed consent from New Zealand and internationally, along with relevant legal and regulatory obligations in New Zealand.

The documents considered are listed in the bibliography provided at the end of this consultation document.

The outcome of the review has led to the development of a draft informed consent practice standard ('draft practice standard') which, once finalised, will apply to all oral health practitioners.

The Council wishes to acknowledge the New Zealand Dental Association's Code of Practice: Informed consent, as a source used in the development of this practice standard. In addition, the Council thanks the office of the Health and Disability Commissioner for their assistance in reviewing the draft practice standard to ensure alignment with New Zealand laws and regulations related to informed consent.

2. New Zealand law and standards

The Code of Health and Disability Service Consumers' Rights Regulation 1996 ('the Code') and common law govern the legal position for informed consent in New Zealand in the majority of situations relevant to oral health practice.

In particular Rights 5, 6 and 7 of the Code are related to the process of informed consent:

Right 5: Right to effective communication

Right 6: Right to be fully informed

Right 7: Right to make an informed choice and give informed consent

The standards framework contains professional standards which reflect the key principles of informed consent - autonomy, competence and effective communication - however the nature of the document limits the guidance that can be provided for practitioners in this practice area.

It is anticipated that by providing more detailed standards and guidance, the informed consent practice standard will assist practitioners in meeting the professional standards of the standards framework and their other obligations in this practice area.

3. Defining and understanding informed consent

Informed consent is an interactive process between a practitioner and a patient where the patient gains an understanding of their condition and the possible options for care; and on this basis can make an informed choice and decide whether or not to give their consent.

The integrity of the informed consent process relies on effective communication and working in partnership with patients to ensure they are fully informed and enabled to make a free and informed choice.

Informed consent is not a one-off event. It is an ongoing process of communication between the patient and practitioner which provides multiple opportunities for the patient to make informed decisions about their oral health, both before and within a period of care; and to give, withhold, affirm, or withdraw their consent.

4. Patient competence

Every patient must be presumed competent to make an informed choice and give informed consent, unless there are reasonable grounds for believing that the patient is not competent¹; this applies regardless of the patient's age.

Competence in the context of informed consent means the patient must be able to:

- understand the purpose of the proposed care and the explanations given about the possible options
- weigh up that information as part of the process of making their choice
- understand that they are free to choose whether or not they give their consent
- communicate their decision (whether by talking, using sign language or any other means).

The patient's ability to make an informed choice and give consent may vary over time and may be influenced by factors such as the complexity of the information they are being asked to consider, their age, their level of maturity, and their mental, physical and emotional state.

Practitioners must assess the patient's competence where there are grounds for believing their capacity to give informed consent may be impaired. Guidance in making this assessment is provided under Standard 6 of the practice standard.

A patient under the age of 16 may give consent to care without the need for a parent/guardian/carer's approval, provided they are able to understand the nature, purpose, and possible consequences of the proposed treatment as well as the consequences of refusing care.²

In this situation in which the patient under 16 years of age is deemed competent to give consent, the Code upholds the patient's right to decide what, if any, involvement they wish their parent/guardian/carer to have in their care and treatment.

Accordingly, the guidance in the practice standard reflects the patient's right in this regard.

¹ Right 7(2) Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996

² Ministry of Health *Consent in Child and Youth Health: Information for Practitioners*.

5. The draft practice standard

The purpose of the draft practice standard is to set minimum standards for the process of informed consent in oral health practice.

The standards and guidance in the practice standard embody Rights 5, 6, and 7 of the Code of Rights, and reflect the professional standards and guidance of the standards framework, and relevant common law.

The draft practice standard has maintained almost all of the information in the current informed consent practice standards, expanded some of the content, and re-formatted the document to achieve consistency with the other updated practice standards.

The key changes in the proposed practice standard are summarised below.

- More information is provided in the introduction of the practice standard to enhance practitioners' understanding of the informed consent process; the importance of effective communication and working in partnership with their patients; and patients' competence to give consent.
- Greater guidance is provided, particularly in relation to effective communication, assessing patient competence, and practitioners' responsibilities when the patient is not competent or has diminished competence.

Consultation questions

Stakeholders are invited to comment on the draft practice standard by responding to the following questions:

- Q1. Do you agree/disagree with the proposed draft informed consent practice standard? If you disagree, please detail why.
- Q2. Does any element of the draft informed consent practice standard require clarification or further guidance? Please explain.
- Q3. Are there areas you consider to be important that have not been covered in the draft informed consent practice standard?
- Q4. Do you have any further comments on the proposed informed consent practice standard?

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