Informed consent policy

Outlines informed consent principles, and roles and responsibilities to ensure that every Southern Cross Healthcare (SCH) consumer has their right to make an informed choice and give informed consent upheld.

Who is this policy for?

This policy is for medical practitioners (Practitioners), registered nurses, anaesthetic technicians and any other registered healthcare professionals (healthcare professionals) involved in the care of consumers at SCH.

Why is this information important?

It's important to understand the principles of informed consent so that we can ensure that every consumer has their right to make informed decisions and give informed consent upheld.

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Principles

Principle	Explanation
Informed consent	• Right 7 of the Code of Rights (the Code) establishes the consumer's right to make an informed choice and give informed consent. • Informed consent is a process of shared decision making by a competent person, voluntarily making an informed choice. This involves the exchange and understanding of all relevant information so that an informed, reasoned and unpressured decision can be made by the patient or someone who has the competence and legal capacity to make such choices.

Principle	Explanation
	• The informed decision includes the option of refusing the treatment, procedure or intervention. It is an interactive process between the healthcare professional, the consumer and sometimes those close to the consumer, such as their whānau.
Competence	• Competence describes the person's ability or capacity to make a rational, informed choice about accepting or refusing treatment or service being offered, or authorising the collection and use of information. • It is presumed that every consumer is competent to make decisions about treatment and procedures, unless there are reasonable grounds to believe that the person is not competent. • Where a consumer has diminished competence, that person still has the right to make informed choices and give informed consent to the extent appropriate to their level of competence.
Informed choice	An informed choice relates to Right 6 of the Code (Right to be fully informed). This is the right for the consumer to the information that a reasonable person in the consumer's circumstances would expect to receive in order to make an informed choice and give informed consent. The Code specifies that this includes: • Explaining their condition, the options available, including assessing the expected risks, side effects, benefits and costs of each option. • Advising the estimated timeframe for the services. • Notifying them of any proposed participation in teaching/research (including whether that research has received ethical approval). • Results of tests and procedures. • Any other information required by legal, professional, ethical and other relevant standards. The consumer also has the right to honest and accurate answers about the identify and qualification of the healthcare professional, the healthcare professional's recommendations, how to obtain an opinion from another healthcare professional and the results of any research. They can also request and receive a written summary of the information provided. Other types of relevant information can include: • The risk of having a procedure performed at a certain location (for example, if fewer backup services are available). • If a particular healthcare professional has limited experience in a certain procedure or that their practice in that area has been restricted. Healthcare professionals must take care to not present consumers with unbalanced explanations of their conditions/options to support their treatment preferences. Voluntary means that the consumer is not pressured to make the decision or give the consent. Relevant considerations include how much time the consumer has been given to consider the options. Presenting consumers with their options on the operating day for example would likely not satisfy this requirement.
When is consent required?	Informed consent must be obtained for each proposed procedure, treatment or intervention by the healthcare professional undertaking the treatment. This includes the primary treatment or intervention (i.e. the surgery/anaesthesia), and also the ancillary care provided by SCH staff. Under the Code, written consent is always required in the following cases: • The consumer is to participate in any research; • The procedure is experimental; • The consumer will be under general anaesthetic; or • There is a significant risk of adverse effects on the consumer. Written consent (including the discussions held, information given and/or relevant circumstances) as well as any reasons for the lack of written consent must be documented in the consumer's clinical record. In extenuating circumstances, verbal consent may be obtained from the patient/guardian/enduring power of attorney and documentation of the reasons for this are recorded in the clinical record.

Principle	Explanation
Validity of consent	Consents must be kept up to date. For best practice always reaffirm consent immediately prior to a procedure or intervention. • Time lapse since consent: If some time has passed since consent was given, discuss it with the consumer. Remind them of the Agreement to Treatment Form and ask if they still want to proceed with the surgery. If they need to talk to the Practitioner again, arrange that. • Document consent: If the consumer is still in agreement and there are no changes, make sure to record this in their notes. Other considerations: Consent may also need to be revisited depending on the: • The nature of the procedure. • Likelihood of change in health status between consent and procedure. • Progression of condition. • Change in competence. • Significant change in the consumer's personal circumstances.
Environment for informed consent	A suitable environment for providing information and gaining informed consent includes: • Avoidance of interruptions • Maintaining privacy and confidentiality • The presence of a support person • Provision of sufficient time to read and/or understand information • Cultural awareness

Roles and responsibilities

Role	Responsibilities
Practitioner	• The Practitioner providing the primary procedure is responsible for explaining the procedure, ensuring the consumer understands, and documenting the consent process. When anaesthesia is part of the procedure, the anaesthetist follows the same process. • Complete relevant forms including all relevant sections of the SCH Agreement to Treatment form. • Ensure the Agreement to Treatment form is updated as required to accurately reflect the exact discussions held and procedures the consumer is consenting to. ***Note:*** *Where the informed consent process has started in the Practitioner's rooms, discussions (e.g. relating to surgical risk) that occur prior to admission may be recorded in the Practitioner's consumer records.*
Other healthcare professionals (e.g. nurses, anaesthetic technicians, physiotherapists etc.)	• Obtain consent for procedures they perform within their scope of practice. This includes explaining the procedure, making sure the consumer understands, and documenting the consent in the consumer's record where required. • Check that patients and Practitioners have completed all relevant sections of the Agreement to Treatment form, and patients are satisfied with the informed consent process provided as per the Procedure for checking informed consent. ***Note:*** *Other healthcare professionals are NEVER involved with completing the Agreement to Treatment form.* • Where there are any concerns relating to proper consent, escalate those to the Practitioner, GM and/or relevant stakeholders.

Considerations for special circumstances

Special circumstance	Considerations
Consumers with limited English proficiency	• Every consumer has the right to effective communication in a form, language, and manner that enables them to understand the information provided. Where necessary and reasonably practicable, this includes the right to a competent interpreter. Without an interpreter, many of the other consumer rights are not available to a person with limited English proficiency (LEP). • While family members may act as interpreters for the consumer's support needs, care should be taken with informed consent matters and an official translation service is required for the primary procedure. SCH staff cannot act as interpreters where the Code requires written consent. • If an official translation service has not been arranged by the Practitioner, hospitals should discuss with the consumer and whānau and arrange an official translation service prior to admission to hospital. If a consumer or Practitioner refuses an official translation service, or an official translation service is unavailable, this must be clearly documented in the clinical records.
Consumer not competent	Where the consumer is not competent to make an informed choice or give informed consent and no person entitled to consent on their behalf is available, Right 7(4) of the Code must be satisfied. *Right 7(4) involves the Practitioner confirming:* • *That they consider it is in the best interests of the consumer to have the surgery* • *That they have taken reasonable steps to ascertain the consumer's view; and* • *Either that:* ○ *taking into that view, that the Practitioner believes on reasonable grounds that the consumer would want the surgery if they were competent to make the choice; or* ○ *without the consumer's view, the Practitioner has taken into account the views of other suitable persons who are interested in the welfare of the person, which may include the Whānau, EPOA or other substituted decision maker.* A lack of competency to make an informed choice and/or consent may occur where the consumer: • Lacks the capacity and is deemed 'mentally incompetent' to make a decision; • Is unable to understand the nature of the decisions; • Is unable to foresee the consequence of decisions; or • Is unable to communicate decisions.
Additional procedures required	**Consumer under sedation or anaesthesia:** While the consumer is under sedation or anaesthesia and an additional procedure is considered to be in the best interest of the consumer, additional requirements must be met: • A decision to proceed beyond any documented consent should be discussed with a clinical colleague or the SCH Chief Medical Officer (CMO). • The medical practitioner must clearly document the process they relied on to satisfy right 7(4) of the Code, in the consumer's clinical notes. • If SCH staff are concerned that the appropriate informed consent process has not occurred, they must immediately escalate these concerns to their manager. It is the manager's responsibility to seek further guidance from the General Manager, National Clinical Governance Team or CMO if required. See also: Operating theatre Agreement to Treatment Form Process **Return to theatre:** If the consumer is competent to provide consent to additional treatment (e.g. return to theatre, blood patch post-epidural), the Practitioner must obtain informed consent on a new Agreement to Treatment form and document appropriately. **Clinical emergency:** If the consumer requires emergency surgery there should be an attempt to gain consent from the consumer or family before the consumer is transferred to surgery. However, in order to save a life or

Special circumstance	Considerations
	prevent serious injury or harm, treatment may be undertaken by the Practitioner without informed consent or a signed Agreement to Treatment form.
Children and young adults	**Over 16 years old:** • Consumers over the age of 16 are considered legal adults and can consent or refuse to consent to medical treatments, unless not competent. • Legal guardianship continues until the person is 18 years old, so for any persons up to 18 years of age who is not competent to make an informed choice a parent or guardian can provide informed consent. **Less than 16 years old:** • If the consumer is less than 16 years of age, they are legally presumed competent to make choices and/or consent to their care. However, depending on the type of treatment and the child's maturity/ability to understand the treatment and the risks, the presumption of competence should be questioned. • The test for evaluating whether a child can consent to medical treatment is known as "Gillick Competence". The Medical Council has advised that, generally, if a child can understand what a treatment or procedure is, why they are having it and what would happen if they did not have that treatment or procedure then they are able to make their own decision about that care. For best practice, a child retains their right to information at a level they can understand, even when unable to consent. Additionally, the consent of their adult parent / guardian or a Personal and Welfare EPOA is always also required. A child / young adult with a disability has the right to be treated with the same respect for personal integrity, autonomy and self-determination as any other person. Practitioners and caregivers / parent / guardian / EPOA must judge carefully the level of information the patient can understand. Care must be taken not to assume lack of capacity to consent. The views of parents, caregivers, child / young adult and practitioner may not always coincide. Each situation will be treated with sensitivity and respect, and time allowed for issues to be discussed. In some situations, an independent advocate can be sought to represent the views and/or interests of the child / young adult.
Advance Directive and Personal and Welfare EPOA **Advance Directive (Code of Rights, Right 7 (5))**	• An Advance Directive is defined as a written or oral directive by which a consumer makes a choice about a possible future health care procedure/s that is intended to be effective only when they are not competent. • Advance Directives are valid only if they are signed at a point in time when all parties were competent to do so and if the consumer intended their directive to apply to the present circumstances. • The General Manager or delegate must sight the documented evidence of the Advance Directive and record this in the consumer's hospital clinical record along with a copy of the documentation. • All consumers are 'for resuscitation' except where there is a written Advance Directive completed and signed by both the consumer and their Practitioner. • No SCH staff may participate in the completing or witnessing of any Advance Directive.
Personal and Welfare EPOA	A consumer may have appointed someone to act as their Enduring Power Of Attorney (EPOA) in regards to personal and welfare. *Note: a 'Property EPOA' has no standing in any healthcare situation.* A Personal and Welfare EPOA arrangement is only valid when it is signed at a point in time where all parties were competent to do so. The Personal and Welfare EPOA must be in place prior to the consumer's admission to hospital. The Personal and Welfare EPOA can agree and sign consent for treatment on the consumer's behalf only in the event the person is not competent to make their own healthcare choices. The General Manager or delegate must sight the documented evidence of:

Special circumstance	Considerations
	• The appointment of the Personal and Welfare EPOA; and • The medical certificate which deems the consumer mentally incapable. This must be documented in the consumer's hospital clinical record along with a copy of the certificate. The law prohibits any Personal and Welfare EPOA from refusing any standard medical treatment or procedure intended to save the life of the consumer. Therefore, the only means by which a consumer can refuse lifesaving treatment in the event of future incompetence is by way of an advance directive (Right 7(5) of the Code). **See:** Informed consent flowchart
Sterilisation of a patient	Caregiver convenience is not a valid reason for performing sterilisation. The responsibility lies with the Practitioner to assess the capacity and wishes of the consumer thoroughly, to assess the viability of alternatives, to assess the risks and to examine the motivation of the person seeking the sterilisation. The Protection of Personal and Property Rights Act 1998 requires that it is necessary to have a court order to sterilise an adult with a disability.
Self-medication	Where a consumer wishes to self-medicate preparations that are not part of the usual or current treatment, such as medicines, remedies or supplements, approval from their Practitioner is required. Where these medicines, remedies or supplements are contraindicated or are not accepted medical practice, the Practitioner cannot be forced to provide treatment they do not agree with. If a consumer wishes to go against the advice of their Practitioner, all advice and information must be documented in the clinical notes so that it is clear the consumer understands the information, accepts the risks and confirms they understand the implications.
Research	The undertaking of research requires written informed consent prior to consumer admission to the hospital. The Chief Executive Officer (CEO) and National Clinical Governance Committee (NCGC) must approve all research involving consumers prior to the study commencing.
Clinical photography	Refer to NZMA clinical images and use of personal mobile devices guide. Document discussions in the consumer's clinical record.
Access to patient notes for PDRP, teaching and learning	Access to consumer records for the purposes of writing exemplars, case studies or journals must adhere to all the following: • Code of Health and Disability Services Consumers' Rights • Health and Information Privacy Code • Nursing and/or Midwifery Councils' of New Zealand Codes of Conduct. Informed consent from the consumer or their authorised representative must be sought to access their records and to use the details of their case / condition. Written consent is preferred, however verbal consent that is subsequently documented and witnessed by a third party is acceptable. Careful anonymisation is required to protect the identity of any consumer.
Student health care practitioners	The Patient Admission Form includes the following: 'I understand that other clinical team members such as student nurses and qualified medical trainees may have supervised involvement with my care and that I have the right to decline their presence or contribution to my care delivery.' If a consumer chooses to opt-out, this must be documented on their clinical record and followed.
Invitees to the consumer care environment	Please refer to Medical company representatives or technical support persons in the operating room

Special circumstance	Considerations
Observers, trainees and media	The presence of other observers and trainees who are not eligible for credentialling can occur only with prior written consent of the consumer, Practitioner and hospital management. Media personnel have no rights of access to Southern Cross Healthcare facilities without the written informed consent of the consumer, Practitioners, General Manager, CMO and CEO. See also Media relations.
Consumer requested support person/visitor	At the consumer's request, a support person or visitor may be granted limited access during treatment or care. For instance, caregivers of children or special needs consumers may be given restricted access to the operating room (OR) before induction and the Post Anaesthesia Care Unit (PACU) once consciousness is regained. Approval from the Practitioner and OR / PACU manager / team leader is required for any support person / visitor to be permitted into the OR during a procedure.

References

- NZ Standard: NZS 8134:2008 Health and Disability Consumer Rights standards
- MCNZ: Informed Consent: Helping consumers make informed decisions about their care
- MCNZ: Cole's Medical Practice in New Zealand
- MoH: Principles & Guidelines for Informed Choice & Consent (1991)
- MoH: Consent in Child and Youth Health: Information for Practitioners (1998)
- HDC: Advance Directives & Enduring Powers of Attorney

Associated documents

Procedure for checking informed consent

The procedure to follow when checking that informed consent has been completed

Informed consent flowchart

The informed consent process including when the consumer is not competent to give informed consent, this includes Enduring power of attorney, Legal guardian and advance directive

Operating theatre Agreement to Treatment Form Process

The process to follow in the operating theatre when there is an incomplete Agreement to treatment form or an additional procedure not listed on the form.

CONTENT CONTROL

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