



Medical Council of New Zealand

Legislative requirements about patient rights and consent

Introduction

The Council affirms that trust is a vital element in the patient-doctor relationship. Ethically a doctor is required to ensure that communication between the doctor and patient enables the patient to understand a health care procedure, its potential risks and possible benefits.

Legally a doctor is required to obtain informed consent as defined by the Health and Disability Commissioner Act 1994 and the Code of Health and Disability Services Consumers' Rights (the Code). However, there are a number of express statutory provisions¹ that allow a doctor to proceed without obtaining informed consent.

These guidelines advise the profession on these provisions and how they impact upon patient rights and a doctor's obligation to obtain informed consent.

Court Orders

1. When there is a conflict between health professionals and the patient requiring emergency lifesaving treatment, the health professional may resolve any legal difficulties by taking the matter to the High Court or the Family Court. The High Court has inherent jurisdiction called "parens patriae" and may make any ruling affecting the well being of any citizen in need.

Professional Regulations Acts

2. Under the Health Practitioners Competence Assurance Act 2003 the Council can require a doctor to submit him or herself for a medical examination by a registered medical practitioner if the Council believes the doctor may be unable to perform the functions required to practise medicine because of a physical or mental condition that affects the registrant's ability to practise safely.

Health and Disability Commissioner Act 1994 and the Code

3. The Code is a regulation developed under Part II of the Health and Disability Commissioner Act 1994.
4. The Code applies to all health and disability support services in New Zealand and gives the following rights to all health consumers. The right to:
 - i. respect
 - ii. fair treatment
 - iii. dignity and independence
 - iv. proper standards
 - v. communication
 - vi. information
 - vii. make an informed choice and give informed consent
 - viii. support
 - ix. all of the above in respect of teaching and research
 - x. complain

¹ New Zealand statutes and regulations can be found at <http://rangi.knowledge-basket.co.nz/gpacts/>

5. Under Right 7 of the Code every consumer is considered competent to make an informed choice and give informed consent, unless there are reasonable grounds for believing the consumer is not competent.
6. The Code outlines the rights of patients who are not considered competent to give informed consent and the responsibility of a health care provider to contact an alternative person to obtain informed consent.

Bill of Rights Act 1990

7. Under section 8 no person shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice.
8. Section 9 states everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.
9. Under sections 10 and 11 of this Act every person has the right not to be subjected to medical or scientific experimentation without that person's consent; and has the right to refuse to undergo medical treatment.

Care of Children Act 2004

10. Section 36 states that children over the age of 16 years can give consent, and refuse to consent, as if they were of full age to any medical, surgical or dental treatment or procedure performed by a professionally qualified person for the child's benefit.
11. Where consent by another person on behalf of a child is necessary, that consent may be given:
 - (a) by a guardian of the child; or
 - (b) if there is no guardian in New Zealand or no guardian of that kind can be found with reasonable diligence or is capable of giving consent, by a person in New Zealand who has been acting in the place of a parent; or
 - (c) if there is no person in New Zealand who has been so acting, or if no person of that kind can be found with reasonable diligence or is capable of giving consent, by a District Court Judge or the chief executive.
12. Section 37 states that except by leave of a High Court judge, no civil, criminal, or disciplinary proceedings may be brought against a person in respect of the administration by a health practitioner of any blood transfusion to a person under the age of 18 years by reason of the lack of consent of a person whose consent is required by law.
13. Section 38 specifies that a female child may consent to any medical or surgical procedure for the purpose of an abortion by a person professionally qualified to carry it out; or refuse her consent to have an abortion, and her consent or refusal to consent shall have the same effect as if she were of full age. This section overrides section 36.

Mental Health (Compulsory Assessment and Treatment) Act 1992

14. A person may lose the right to give informed consent and be required to undertake psychiatric assessment and treatment under the Mental Health (Compulsory Assessment and Treatment) Act 1992.
15. Under section 8A any person can apply to the Director of Area Mental Health Services to have another person assessed. That application must be accompanied by a medical certificate from a registered doctor.

16. Compulsory assessment and treatment is only undertaken by an appropriately qualified doctor or psychiatrist who has been approved by the Director of Area Mental Health Services.
17. A person may lose the right to give informed consent under section 7(2)(a) and be required to undertake medical treatment, care, and supervision for tuberculosis.

Protection of Personal and Property Rights Act 1988

18. Under section 18(1) a welfare guardian appointed by a Court shall not have power to:
 - (a) refuse consent to the administering to that person of any standard medical treatment or procedure intended to save that person's life or to prevent serious damage to that person's health; or
 - (b) consent to the administering to that person of electro-convulsive treatment; or
 - (c) consent to the performance on that person of any surgery or other treatment designed to destroy any part of the brain or any brain function for the purpose of changing that person's behaviour; or
 - (d) consent to that person taking part in any medical experiment other than one to be conducted for the purpose of saving that person's life or of preventing serious damage to that person's health.
19. Under section 98 a person (the donor) may appoint another person as an attorney under an enduring power, either generally or for specific matters. The attorney can only authorise action in relation to the donor's personal care and welfare if the donor is mentally incapable and is subject to the same restrictions under section 18, which is outlined in clause 18 of this guideline.

Health Act 1956

20. Under section 70(1)(e) a Medical Officer of Health can require a person to report themselves or submit themselves for medical examination at specified times and places for the purpose of preventing the outbreak or spread of any infectious disease.
21. Under section 70(1)(h) a Medical Officer of Health can forbid a person to leave the health district or the place in which he or she is isolated or quarantined until the person has been medically examined and found to be free from infectious disease, and until the person has undergone such preventive treatment as prescribed by the Officer.
22. Under section 74 a doctor who believes a patient is suffering from a notifiable disease or from any sickness of which the symptoms create a reasonable suspicion that it is a notifiable disease must immediately notify :
 - the occupier of the premises; and
 - every person nursing or in immediate attendance on the patient; and
 - the Medical Officer of Health; and in some cases;
 - the local authority of the district.
23. Under section 79 a Medical Officer of Health can isolate an individual who is likely to cause the spread of any infectious disease, whether or not the individual is suffering from the disease. Under subsection (4) force may be used to isolate this individual if necessary until the person has been medically examined and found to be free of the infectious disease.
24. Under section 88 any person who is suffering from or believes he or she is suffering from a venereal disease is legally obligated to present themselves to a doctor and submit him or herself for treatment for the disease until cured or free from its communicable form.

25. Under section 125 a person authorised by the Minister of Health may at reasonable times enter a public school or child-care centre and examine the children. Consent from the children or parents may not be necessary.
26. If that authorised person believes there are reasons to be concerned about the welfare of the child, of any condition which in his or her opinion is affecting the health or normal development of the child, or of any disease or defect from which in his or her opinion the child may be suffering, that person has the power to notify the parent or guardian of any such child, whom he or she reasonably believes to be concerned with the welfare of the child. Consent from the child or parent is not necessary.

Land Transport Act 1998

27. Section 18 states that if a doctor is consulted by a person who holds a driver's licence and the doctor considers that the mental or physical condition of the licence holder is such that, in the interests of public safety, the licence holder:
 - should not be permitted to drive motor vehicles of a specified class or classes; or
 - should only be permitted to drive motor vehicles subject to such limitations as may be warranted by the mental or physical condition of the licence holder;
 - the doctor must inform the Director of Land Transport Safety.
28. Sections 72 and 73 state that a person must permit a registered doctor or a medical officer to take a blood specimen if directed by an enforcement officer when the person has failed or refused to undergo an evidential breath test. If the person is unconscious or unable to consent a doctor may still take a specimen without obtaining consent.

Armed Forces Discipline Act 1971

29. If a doctor or a competent advisor believes that a person subject to this Act needs medical treatment of some type because that person may otherwise threaten the health or operational efficiency of others in the Armed Forces that person can be ordered to undergo treatment without the right to provide consent.
30. Under section 72(2) an individual subject to this order has the right to a second opinion before any treatment is undertaken.

Criminal Justice Act 1985

31. According to section 148 a person subject to a criminal sentence under this Act does not lose his or her rights to provide consent about a health care procedure/medical or other treatment or surgical procedure.
32. Under section 121 a person may be subject to a psychiatric report without giving consent if ordered by the Court. This applies when a defendant is charged with, or convicted of certain offences and a psychiatric report would assist the Court in determining:
 - if the defendant is "under disability"; or
 - if the defendant is insane under section 23 of the Crimes Act 1961; or
 - the appropriate type and length of sentence; or
 - the nature of any requirement or condition the Court may impose as part of any sentence or order.

Penal Institutions Act 1954

33. Section 36A states that an inmate commits an offence if ordered, but refuses, to undergo a medical, dental or x-ray examination and is subject to a penalty of a maximum 3 months imprisonment. This order may only be given if a medical or dental practitioner believes the inmate may have an infectious disease or spread infection to other inmates.
34. Under Section 36C an inmate may be required to undertake a test administered by a medical practitioner to ascertain whether the inmate has HIV or AIDS infection or is carrying HIV antibodies.
35. Section 36D(2) states the medical practitioner employed to perform HIV or AIDS testing must inform the Chief Executive Officer of the Department of Corrections of the number of inmates who have the AIDS or HIV infection or are carrying HIV antibodies. Identifying information of these inmates must not be disclosed.

Contraception, Sterilisation, Abortion Act 1977

36. Section 4 allows a parent, a guardian or a person who has custody or care of a “mentally subnormal” female (as defined by the Act) to administer contraception if it is considered in the female’s best interests.
37. Under section 7 no one is given the power to consent to the performance of sterilisation on another person just because the person is considered too young to consent on his or her own behalf.

Children, Young Persons and Families Act 1989

38. Sections 49-52 state that the Court may require a child to attend a medical examination by a registered doctor if there are reasonable grounds for suspecting that a child or young person is suffering ill-treatment, abuse, neglect, deprivation, or serious harm.
39. Section 51 states the Court may restrict the nature of the medical examination that may be carried out and the procedures used to carry out the examination.
40. Section 53(2) states a social worker may, with the consent of any parent or guardian of the child or young person, arrange for any child or young person to whom this section applies to be medically examined by a registered doctor.
41. Under section 53(3) a social worker who has not obtained informed consent from the parents after making reasonable efforts to do so can require the child or young person to be medically examined by a registered doctor.
42. Guardians appointed under sections 139–142 of this Act are given the power to consent on behalf of the child, under section 149.
43. Sections 178 and 333 state that the Court can order a child or young person (respectively) subject to this Act to attend for a medical, psychiatric, or psychological examination for the purpose of its proceedings.
44. Section 196 allows a lawyer acting on behalf of a child subject to this Act to give consent on behalf of the child for the child’s doctor to disclose any protected information obtained in the doctor-patient relationship.

Alcoholism & Drug Addiction Act 1966

45. A District Court Judge can order a person believed to be an alcoholic (as defined in this Act), who has been arrested under this section to be examined by two doctors for the purpose of having the alcoholic condition confirmed or denied by an appropriately qualified person.

Criminal Investigation (Blood Samples) Act 1995

46. Under section 31 a Court may order the taking of blood samples to be used for DNA testing without consent from a person suspected of any offence.

Please note that just because a section of law excludes the necessity to obtain informed consent before performing a health care procedure, there is no legislation that removes the right of communication and information from the patient. Patients should always have the healthcare procedure explained in enough detail to ensure they understand its purpose, proposed benefits and possible risks.

April 2002

Updated October 2005 for the Care of Children Act 2004

This statement is scheduled for review by October 2010. Legislative changes may make this statement obsolete before this review date.