Policy Informed Consent

Churchill Hospital

Purpose:

The purpose of this policy is to establish principles, practices and procedures to guide and ensure best practice for informed consent occurs in Churchill Hospital.

Policy Statement:

To ensure all procedures or treatments are provided only after informed consent has been given by the person who is to receive the treatment or procedure, or another person legally entitled to consent on their behalf, or where one of the exceptions to requiring consent applies. In accordance with the Code of Health and Disability Services Consumers' Rights, rights 6 and 7, all patients will receive information in a language and timeframe that is understood by the patient to consider the benefits, risks and treatment options of treatment or surgery.

Ability to provide consent is outlined in the specific considerations below;

Scope:

This policy must be followed by all clinical staff and credentialed medical practitioners within Churchill Hospital.

Specific considerations for procedural consent

1. **Where it is not possible to obtain consent** because a person is unconscious or otherwise considered incompetent to give consent and urgent lifesaving care is needed, health professionals have the right and duty to proceed without obtaining consent.

   Where possible and practical, family and whanau should be made aware of events but cannot sign the consent form unless they are legally entitled as covered by other sections of this policy.

2. **Consent is an interactive process** between a doctor/clinician and patient where the patient gains an understanding of his/her condition and receives an explanation of the options available including an assessment of the expected risks, side effects, benefits and costs (if applicable) of each option and thus is able to make an informed choice and give their informed consent**.**

3. **Any advanced care plan should be discussed during the consent process.**

4. The Code of Health and Disability Services Consumer Rights sets in place the provision to make an informed choice and give informed consent.
   - The communication must occur in an environment that enables the parties to communicate openly, honestly and effectively.
   - Credentialed Medical Practitioners and staff must provide information in relation to a proposed procedure in a form, language and manner that the patient can understand.
   - The patient has the right to consider fully the information given and seek further opinion.
   - The patient, free from coercion, then consents to the procedure.

5. **The completed consent form is written acknowledgment that the process has provided the patient with sufficient information, in a format and language they can understand**, to enable them to make an informed decision about their treatment.

6. **For consent to be valid it must be given voluntarily by a competent individual.** Medication, intellectual disability, mental illness, inebriation, age, physical injuries, and communication difficulties may affect the informed consent process.

7. The final responsibility for ensuring valid consent lies with the medical practitioner who is to perform the procedure.

Definitions

Informed consent

The process whereby a person or another person legally entitled to consent on the first person's behalf, having been given sufficient information, arrives at a reasoned decision as to whether to agree to a proposed therapy or procedure.***[1,2,3] (Coles, HDC & MCNZ)***

Consent is more than simply signing a form; it is an ongoing process that encompasses the following principles:

- **Disclosure** – of understandable information. "There is a duty to take reasonable care to ensure that the patient is aware of any material risks involved in any recommended treatment and of any reasonable alternative or variant treatments".[4,5]
- **Comprehension** – the patient or consumer should have the capacity to understand the information and be able to make and to authorise a choice about how to proceed.
- **Voluntary choice** – the patient must be free of any coercion to proceed with an activity.
- **Authorisation** – having been given adequate time to consider the information provided and discuss it with important others, the patient or consumer gives their agreement to proceed[6].

Person legally entitled to consent on behalf of an incompetent person

- Where the person is under 16 years of age:
  - Their guardian (who will usually be a parent)

    Young people under 16 have the right to be involved in decisions that affect them and at times can consent in the absence of consent from a guardian
- Where the person is over 16 and unable to give consent:
  - A welfare guardian appointed under the Protection of Personal and Property Rights Act 1988.

    A welfare guardian does not have the right to 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 (NZ government legislation)
  - An activated enduring power of attorney; or
  - Any other person by order of a Court.

Family / whanau

The support network of the consumer, which includes both immediate family members and other people whom the consumer feels to be important in their life.

Guardian

Under the Care of Children Act 2004 a guardian is a person who has all duties, powers, rights, and responsibilities that a parent of the child has in relation to the upbringing of the child. This includes determining for or with the child, or helping the child to determine, questions about important matters affecting the child including medical, surgical and dental treatment for the child (including blood transfusions).

Guardianship terminates when the child reaches 18 years, the child marries, enters a civil union or when a child 16 years or older lives with another person as a de facto partner.

References

1. Fyfe J, C. A. (2013). Informed consent. In *St George IM (ed) Cole's medical practice in New Zealand. 12th Edition* (p. Chapter 10). Wellington: Medical Council of New Zealand.
2. Health and Disabilty Commissioner. (2014). *HDC: Code of RIghts.* Retrieved from Health and Disability Commissioner NZ Code of RIghts: http://www.hdc.org.nz/the-act--code/the-code-of-rights/the-code-(summary)
3. Medical Council of New Zealand. (2011, March). Information, choice of treatment and informed consent. Wellington, NZ: MCNZ.
4. Sokol, Daniel K. "Update on the UK law on consent." *BMJ: British Medical Journal (Online)* 350 (2015).
5. Farrell, Anne Maree, and Margaret Brazier. "Not so new directions in the law of consent? Examining Montgomery v Lanarkshire Health Board." *Journal of medical ethics* 42.2 (2016): 85-88.
6. Grady, Christine. "Enduring and emerging challenges of informed consent." *New England Journal of Medicine* 372.9 (2015): 855-862.
7. Keenan, R. (2016). Health Care and the Law (5th Ed). Wellington, NZ: Thomson Reuters NZ Ltd.

Care of Children's Act 2004
Drug Addiction Act 1996
Health Act amended 2010
Health Act 1956
Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996
Health and Disability services standards 8134:2021, criteria 1.7
Protection of Personal and Property Rights Act 1988

Associated Documents

Informed Consent Procedure
Informed Consent Form