

Informed Consent Practice Standard

Purpose

The purpose of the informed consent practice standard is to set minimum standards for the process of obtaining informed consent for podiatrists in health practice in Aotearoa New Zealand.

Practitioners' obligations

Practitioners are legally and ethically obliged to obtain a person's informed consent before providing care.

These obligations are set out in the [The Health and Disability Commissioner \(Code of Health and Disability Services Consumers' Rights\) Regulations 1996 \(the Code\)](#)

The Code provides that every person has the right to effective communication, the right to be fully informed, and the right to make an informed choice and give informed consent.

Defining and understanding informed consent

The HDC describes informed consent as a *process requiring effective communication between the practitioner and the patient (Right 5), provision of all necessary information to the patient (Right 6), and the patient's freely given and competent consent (Right 7)*. It is not just the signing of a form, or the practitioner telling the patient what's best for them. It is an interactive, ongoing process between a practitioner and a patient where the person:

- gains an understanding of their condition.
- receives an explanation of the possible options for care, including an assessment of the potential risks and side effects, benefits, and costs of each option—in a way they can understand.
- has the opportunity to ask questions and discuss the information given to them. On this basis, the person can make an informed choice, and decide whether or not to give their consent.

The informed consent process acknowledges peoples' rights to autonomy and freedom of choice—it recognises that people have the right to make their own decisions about their health taking into

account their own beliefs and values, their culture and whanau/family life, and make choices which are most appropriate to their own circumstances.

Communication and partnership

Effective communication between the practitioner and the patient is fundamental to the informed consent process.

Every person has the right to the information that a reasonable person, in the patient's circumstances, would expect to receive. Practitioners need to be sure therefore that people receive all the information they need and request to make an informed choice, and that they truly understand their condition and their options for care.

Practitioners can meet this obligation by working in partnership with their patients by providing relevant, sufficient and balanced information, and by encouraging their patients to ask questions, discuss the various options, and express their views and preferences. This approach enables people to understand their options and genuinely exercise their autonomy; and assists in achieving better outcomes.

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

While a practitioner may recommend a particular option for care, they must not put pressure on any person or coerce them into accepting their recommendation. The person must be able to freely give or withhold their consent.

Competence

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

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

- understand the nature and purpose of the proposed care and the explanations given about the possible options—including the potential risks and side effects, benefits, and costs of each option
- 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 (including the consequences of their decision to give or withhold consent)
- communicate their decision (whether by talking, using sign language or any other means).

Practitioners must assess the person's competence where there are grounds for believing their capacity to give informed consent may be impaired.

When a person is not competent or has diminished competence, the HDC Code of Rights requires that practitioners seek to involve someone in the informed consent process who is legally entitled to consent on the person's behalf, and to obtain their consent before providing care.

This person may be:

- a parent, guardian, or carer with legal authority
- welfare guardian, appointed under the Protection of Personal and Property Rights Act 1988
- someone with enduring power of attorney for the person's health and welfare.

Being a relative of the patient does not in itself give legal authority to consent on behalf of that person.

Where a person has diminished competence, that person retains the right to make informed choices and give informed consent, to the extent appropriate to their level of competence, regardless of age. This means that while someone with legal authority needs to be involved in the informed consent process and provide their consent, practitioners need to make every effort to encourage and enable the continued involvement of the person in the informed consent process, to the extent their level of competence allows.

Under the [Care of Children Act 2004](#) young people over the age of 16 have the right to give consent, or refuse to give consent, for any treatment or procedures as if they were of full age.

A person 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.

Practitioners are advised to carefully consider the situation where the person under 16 years of age is deemed competent to give consent. Even though parental consent is not legally required, practitioners are advised to consider involving the parent/guardian/carer in the informed consent process, and to gain their approval for care. In this event, it is expected that the person will continue to be involved in the decision-making process.

Expression of consent

People typically give oral or written consent. Oral consent is considered sufficient when minor procedures are involved in the person's care but, written consent is advisable when the person's care is complex and is required in specific circumstances (see Standard 7).

Practitioners are reminded that regardless of the way in which the person gives their consent, the integrity of the informed consent process relies on effective communication and working in partnership with their patients to ensure people are fully informed and enabled to make a free and informed choice.

Practitioners are advised to include a summary of the discussions held during the informed consent process in the patient record.

Practice Standards

The Informed Consent Practice Standard sets the minimum standards for the process of obtaining informed consent for podiatrists providing health care in Aotearoa New Zealand, which are listed below:

1	You must provide an environment that enables open, honest and effective communication.
2	You must give people information in a way they can understand, and confirm their understanding, so they can make informed choices about their health.
3	You must ensure people are fully informed during the informed consent process; and give honest and accurate answers to questions relating to their care.
4	You must obtain the informed consent of the person before providing care, unless there is some other clear authority to treat.
5	You must ensure informed consent remains valid throughout the period of care.
6	<p>You must assess a person's competence to give informed consent where there are grounds for believing their capacity may be impaired.</p> <p>When they are not competent or competence is diminished, you must wherever possible involve someone in the informed consent process who is legally entitled to consent on the person's behalf and obtain their consent.</p> <p>Where no such person exists or is available to consent on behalf of the patient, provide care only when you can do so lawfully (in accordance with the HDC Code of Rights).</p>
7	<p>You must have the written informed consent of the person when:</p> <ul style="list-style-type: none"> • the person is to participate in any research; or • the procedure is experimental; or • the person will be sedated or under a general anaesthetic; or • there is a significant risk of adverse effects on the person.
8	You must respect the person's right to refuse care and to withdraw their consent at any time; and accept their decisions without prejudice.

Useful Resources:

Health New Zealand | Te Whatu Ora informed consent guidance - <https://www.tewhatauora.govt.nz/for-new-zealanders/informed-consent/>

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