



**Who can consent to medical and dental treatment?**

For patients 16 years or older, medical and dental practitioners must seek the patient’s consent before giving treatment. If the patient is not capable of consenting to treatment, the practitioner must seek consent from the patient’s ‘person responsible’, in most cases. This is a requirement of the *Guardianship Act 1987*.

**Who is the person responsible?**

A person responsible is not necessarily the patient’s ‘next of kin’. A person responsible, in order of priority, is:

- An appointed guardian (including an enduring guardian) who has been given the right to consent to medical and dental treatments or, if there is no guardian
- the most recent spouse or de facto spouse (including same-sex partner) when the spouse or de facto has a close and continuing relationship with the person or, if there is no spouse or de facto spouse
- the unpaid carer or the carer at the time the person entered residential care (note: recipients of a government carer benefit are not considered to be paid) or, if there is no carer
- a relative or friend who has a close personal relationship with the person.

If the person responsible can’t or won’t make a treatment decision, he or she must decline in writing. The next person in the list will then become the person responsible. A practitioner or other qualified person can remove the person responsible from their role by certifying, in writing, that the person responsible is not capable of carrying out the role.

If there is no person responsible there are other ways consent to treatment can be obtained. This can be through the practitioner or the Guardianship Tribunal. See overleaf for further information.

**Who assesses a person’s capacity and decides who the person responsible is?**

The practitioner decides if a person has capacity to consent to treatment. If the patient lacks capacity, it is also the practitioner who identifies who the person responsible is. If there is dispute about the person’s capacity, you may request a specialist capacity assessment or make an application to the Guardianship Tribunal (contact details below).

**What are your rights and responsibilities as the person responsible?**

The practitioner should give the person responsible all the information they would ordinarily give a patient who has capacity to make treatment decisions. If you are the person responsible for someone, the practitioner has a responsibility to provide you with information about:

- what the condition is
- what the recommended treatment is
- what the risks of the treatment are and any alternative treatments.

The practitioner must seek your consent before treating the person you are responsible for. That is, you can say “yes” or “no” to any proposed treatment, and can seek a second opinion if you have doubts. In limited cases a practitioner can treat without your consent. See overleaf for detail.

**What treatments can’t a person responsible consent to?**

The person responsible can’t consent to some treatments in some circumstances. These include ‘special treatment’ and any treatment the patient is objecting to. See overleaf for more information.

**What if the treatment is urgent?**

If the practitioner considers the treatment to be urgent and necessary, treatment can be given without consent from the person responsible. See overleaf for more information.

**What if I have a complaint?**

If you have a complaint about a medical or dental practitioner, you can call the Health Care Complaints Commission on 02 9219 7444 or 1800 043 159.

**Contacts**

|                              |   |   |                         |
|------------------------------|---|---|-------------------------|
| <b>Guardianship Tribunal</b> | <b>Phone</b> 02 9556 7600<br><b>Email</b> <a href="mailto:gt@gt.nsw.gov.au">gt@gt.nsw.gov.au</a>  | <b>Tollfree</b> 1800 463 928<br><b>Web</b> <a href="http://www.gt.nsw.gov.au">www.gt.nsw.gov.au</a> | <b>TTY</b> 02 9552 8534 |
| <b>NSW Public Guardian</b>   | <b>Phone</b> 02 8688 6070<br><b>Email</b> <a href="mailto:informationsupport@opg.nsw.gov.au">informationsupport@opg.nsw.gov.au</a><br><b>Web</b> <a href="http://www.lawlink.nsw.gov.au/opg">www.lawlink.nsw.gov.au/opg</a> | <b>Tollfree</b> 1800 451 510  | <b>TTY</b> 1800 882 889 |

## Summary Guide: Medical and dental consent for adults 16 years and over<sup>1</sup>

| Type   | Description of treatment   | Who can consent?   |
|--|--|--|
| <b>Urgent treatment</b>                      | Treatment considered urgent and necessary to: <ul style="list-style-type: none"> <li>• save a patient's life</li> <li>• prevent serious damage to health</li> <li>• prevent or alleviate significant pain or distress (not including special treatment)</li> </ul>   | <b>No consent needed</b>   |
| <b>Major treatment</b>                       | <ul style="list-style-type: none"> <li>• Any treatment involving general anaesthetic or sedation (except as listed in minor below)</li> <li>• Medications affecting the central nervous system (except as listed in minor)</li> <li>• Drugs of addiction (except as listed in minor)</li> <li>• Long-acting injectable hormonal substances for contraception or menstrual regulation</li> <li>• Any treatment for the purpose of eliminating menstruation</li> <li>• Testing for HIV</li> <li>• Any treatment involving substantial risk to the patient</li> <li>• Any dental treatment resulting in the removal of all teeth or which significantly impairs chewing</li> </ul>  | <p><b>Person responsible</b> can consent</p> <p>Request and consent must be in writing or, if not practicable, later confirmed in writing</p> <p>If there is no person responsible or the person responsible cannot be located, or will not or is unable to respond, only the Guardianship Tribunal can consent</p>  |
| <b>Minor treatment</b>                       | <ul style="list-style-type: none"> <li>• All treatments (except those listed in major or special)</li> <li>• Treatment involving sedation: <ul style="list-style-type: none"> <li>- for management of fractured or dislocated limbs</li> <li>- for endoscopes inserted through an orifice, not penetrating the skin or mucous membrane</li> </ul> </li> <li>• Medications that affect the central nervous system which are used: <ul style="list-style-type: none"> <li>- for analgesic, antipyretic, antiparkinsonian, antihistaminic, antiemetic, antinauseant or anticonvulsant purposes</li> <li>- only once</li> <li>- for PRN (as required) not more than 3 times per month</li> <li>- for sedation in minor procedures (unless dental)</li> </ul> </li> </ul> | <p><b>Person responsible</b> can consent</p> <p>If there is no person responsible or the person responsible cannot, will not or is unable to consent, the <b>doctor or dentist</b> may treat without consent. However, the doctor or dentist must note on patient's record that the treatment is necessary to promote the patient's health and wellbeing and that the patient is not objecting</p> |
| <b>Special treatment</b>                     | <ul style="list-style-type: none"> <li>• Use of medication affecting the central nervous system where dosage, duration or combination is outside accepted norms</li> <li>• Androgen-reducing medications for behavioural control</li> <li>• termination of pregnancy</li> <li>• treatments intended or likely to result in infertility</li> <li>• vasectomy and tubal occlusion</li> <li>• aversives: mechanical, chemical or physical</li> <li>• any new treatment that has not yet gained the support of a substantial number of doctors or dentists specialising in the area</li> </ul>   | Only the <b>Guardianship Tribunal</b> can consent  |
| <b>Objection to major or minor treatment</b> | If the patient indicates, or has previously indicated, that he or she does not want the treatment carried out  | <p>Only the <b>Guardianship Tribunal</b> can consent</p> <p>However, if the <b>practitioner</b> assesses the person to have minimal or no understanding of the treatment and believes the treatment will cause only tolerable and transitory distress, then the person's objection can be disregarded</p>  |

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<sup>1</sup> More detailed information about substitute medical consent is available in the booklet, *Substitute Consent: what the law says* (2011). The booklet is available upon request from the NSW Public Guardian or online. See contacts overleaf for detail.