

POLICY FOR OBTAINING CONSENT

Healthcare Professionals may provide emergency treatment to patients without consent provided that the treatment is necessary to preserve life or to prevent a serious deterioration in the patient's condition.

<p>Key Messages</p>	<p>NHS Lothian has a Consent Policy & Guidance Document. This document sets out the standards for NHS Lothian and this along with the available full guidance document will support staff enabling them to comply with current requirements/legislation.</p> <p>NHS Lothian accepts that patients have a fundamental right to:</p> <ol style="list-style-type: none"> 1) Receive sufficient verbal and written information to enable an informed decision to be made. 2) Grant or withhold consent prior to any examination or treatment. 3) Withdraw consent at any stage up to and during the procedure without prejudice to further treatment. <p>Healthcare professionals must seek explicit written consent for:</p> <ul style="list-style-type: none"> ▪ procedures that carry significant risk ▪ procedures that could be considered new ▪ procedures/treatment that are part of a project or programme of research approved by NHS Lothian or there are implications for third parties, e.g. in relation to genetic studies or HIV testing. <p>Valid consent to treatment is absolutely central in all forms of healthcare. Patients must be informed about risks, benefits and consequences of proposed treatment.</p> <p>Consent forms are evidence of a process not the process itself</p> <p>Consent is the voluntary and continuing permission of a patient to receive a treatment or undergo a particular procedure.</p>
<p>Minimum Implementation Standards</p>	<p>Good Practice for Managers</p> <ul style="list-style-type: none"> • Has identified the staff in his or her area to whom this policy applies and has given the policy (or selected excerpts) to them. • Has assessed the impact of the policy on current working practices, and has an action plan to make all necessary changes to ensure that his or her area complies with the policy. • Has set up systems to provide assurance to him or her that the policy is being implemented as intended in his or her area of responsibility. <p>Good Practice for Employees</p>

	<ul style="list-style-type: none">• Has read the policy (or selected excerpts) and considered what it means for him or her, in terms of how to conduct his or her duties.• Has completed any mandatory education or training that may be required as part of the implementation of the policy.• Has altered working practices as expected by the policy.
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1. INTRODUCTION

Patients have a fundamental legal, ethical and moral right to determine what happens to their own bodies. Valid consent to treatment is therefore absolutely central in all forms of healthcare, from the provision of personal care to undergoing major surgery. Seeking consent is also a matter of common courtesy between all care providers and patients.

Successful relationships between clinicians and patients depend on trust. To establish that trust, staff must respect patient's autonomy – the right to self determination whether or not to undergo any medical / clinical intervention even where a refusal may result in harm to themselves or in their own death.

Patients must be given sufficient information, in a way that they can understand, in order to enable them to exercise their right to make an informed decision about their care. Key to effective communication is enabling patients to make informed decisions. Staff must take appropriate steps to find out what patients ought to and want to know and ought to know about their condition and available treatment.

Patients have a right to information about their condition and the treatment options available to them. The amount of information we give each patient will vary depending on the nature of the condition, the complexity of the treatment, the risks associated with the treatment or procedure and the patient's own wishes.

When it is believed that the patient has been given appropriate and adequate information it is for the patient (guardian or welfare attorney) **not** the healthcare professional to determine what is in the patient's best interest. However, a healthcare professional can recommend a treatment or course of action to the patient but no pressure should be put on the patient to accept their advice or suggestion for treatment. Where there have been difficulties in making a decision it is appropriate to document such discussions and the rationale for final decision.

In certain limited circumstances a legal decision can be sought to determine what is in the patient's best interest and in an emergency, where consent cannot be obtained, healthcare professionals may provide clinical treatment to anyone in need, provided that treatment is limited to what is immediately necessary to save life or avoid significant deterioration in the patient's health. Additional or alternative procedures must only be carried out on anaesthetised or sedated patients where this is unequivocally in the patient's best interest and can be fully justified.

The Human Rights Act 1998 came fully into force throughout the UK in October 2000. The Act requires all public authorities, including healthcare professionals working for the NHS, to act in accordance with the rights set out in the Act. Whilst the implementation of the Human Rights Act has not created a major change in practice for healthcare professionals, the Act has been used to challenge some medical decisions. It is therefore essential that decisions taken, both about individual patients and in terms of medical policy, take account of the Act, are transparent and can withstand scrutiny. Accurate and detailed recording of both the decision and the decision-making process also take on added importance. *(From The impact of the Human Rights Act on medical decision-making BMA 2007).*

2. AIM OF POLICY

NHS Lothian has developed guidance for obtaining informed consent inclusive of a summary document (Appendix 1). This should be made available within all clinical areas. It is the responsibility of all healthcare professionals to consult this document for advice on the current law and good practice requirements in seeking consent. Healthcare professionals must also be aware of any guidance on consent issued by their own professional/regulatory body. Throughout this document the term healthcare professional has been used when referring to doctors, nurses, AHPs, dentists and others.

This policy and guidance document is predominantly about consent to treatment and / or investigation. There are, however several NHS Lothian documents that should be considered along with this, e.g. Confidentiality of Patient Information and Information Governance Policies (see references).

3. SCOPE

This policy relates to all patients receiving care within NHS Lothian and applies to all NHS staff working within a clinical environment providing care and / or treatment to patients. Information contained within this document is also applicable to indirectly employed staff whilst conducting business within NHS Lothian, e.g. conducting research.

4. WHAT IS CONSENT?

Consent is a process rather than a one off decision. The steps in the process include discussions with patients, the giving of verbal and written information and the explanation of risks and benefits. All of these steps should be formally documented. A patient must be properly informed about the risks, benefits and consequences of any proposed treatment and that of possible alternatives before signing, a consent form. A fully informed patient is less likely to have cause to complain or to resort to litigation. A signature on a consent form is normally the concluding part of the consent process. It is important to realise that if the patient has not been given appropriate information then consent may not be valid despite their signature on the form. Consent forms are evidence of a process not the process itself.

Consent is the voluntary and continuing permission of the patient to receive a particular treatment or procedure based upon adequate knowledge and understanding of:

- The purpose
- The nature
- Any likely effects
- Any significant risks of that treatment including the likelihood of its success and outcomes
- Consequences of either no treatment or alternative treatment

Permission given under unfair or undue pressure is not a valid consent. Neither is consent obtained from a patient not proficient in English or who has communication

needs without the use of appropriate language or communication support (see references). Failure to secure consent may constitute assault under common law in Scotland.

5. WHO SHOULD OBTAIN CONSENT

It is the responsibility of the healthcare professional providing the treatment, carrying out an investigation or performing a surgical operation or other procedure, to discuss it with the patient and provide any information necessary to enable the patient's understanding and to obtain consent.

Whoever is seeking a patient's consent and ensuring the completion of the consent form should:

- Have sufficient knowledge of the proposed investigation or treatment (including knowledge of the risk involved)
- Act in full accordance with the NHS Lothian consent policy and available professional guidance

Additionally, there are situations in which it may be regarded as standard practice for one healthcare professional to refer a patient to a colleague to carry out a particular procedure or investigation or aspect of treatment. An example could be referral of a patient by a surgeon for diagnostic or interventional radiology.

In these circumstances, the referring healthcare professional should explain the general need for the proposed referral, where available using information provided by the 'receiving' healthcare professional. However, it will be for the 'receiving' healthcare professional to provide any further 'specialist' information necessary to secure the patients full understanding and to then obtain their consent for the treatment / procedure / investigation.

Where an anaesthetic is to be administered as part of a treatment, a separate anaesthetic consent form is not required; however adequate explanation of the anaesthetic procedure should be given to the patient as part of the consent process.

If due to illness or other circumstance the healthcare professional carrying out the procedure is not the same healthcare professional that has previously obtained consent, then the healthcare professional carrying out the procedure should seek reconfirmation of consent from the patient.

Regardless of who has provided the information and obtained consent, all discussions and consent should be recorded in the patient's healthcare records. It remains the responsibility of the person performing the procedure to ensure:

- That the patient has been given sufficient time and information to make an informed decision
- That all the other requirements of the NHS Lothian Consent policy have been met

Where a patient has consented for treatment and / or investigation they have the right to withdraw consent at any time. This is inclusive of where a patient has given consent to a course of therapy and is partly through the treatment.

For patients retained under the Mental Health Act please also refer to the policy for Completion of Mental health (Care and Treatment) (Scotland) Act 2003 Consent to Treatment Certificates.