

22 May 2014

New Zealand Dental Association  
PO Box 28084  
Remuera  
AUCKLAND 1541

### **New Zealand Dental Association Code of Practice – Informed Consent (March 2014)**

Thank you for the opportunity to comment on the revision of the New Zealand Dental Association (NZDA) Code of Practice relating to informed consent (Code of Practice). I commend you for updating this Code of Practice and for addressing informed consent issues so fully within it.

#### *Process of informed consent*

The Code of Practice correctly identifies that informed consent is a process, not a single event. However the next sentence refers to providing “necessary information” in a language and manner that makes it possible for the patient to make an informed choice between healthcare options available. While in simple terms this is not inaccurate, informed consent is a process consisting of three essential elements: effective communication, provision of full information, and the giving of consent. These elements are reflected in Rights 5, 6 and 7 of the Code of Health and Disability Services Consumers’ Rights (the Code). The requirement in Right 6(1) of the Code is that a health practitioner provides all the information that a reasonable consumer, in that consumer’s circumstances, would expect to receive (Right 6(1)), which may in some cases go beyond what a provider assesses to be “necessary information”.

#### *Sedated patients*

The Code of Practice states that when a patient is to receive dental treatment whilst sedated or unconscious, care must be taken to ensure that the patient is informed of possible changes in the treatment plan and consent gained for those potential changes prior to the sedation or general anaesthetic. While this may be appropriate, not all possible changes can be foreseen prior to treatment. There may be some situations where it will be necessary to cease treatment and wake the patient from the sedation/anaesthetic to discuss the changes to the treatment plan.<sup>1</sup>

#### *Documenting the consent process*

The Code of Practice states that “written consent requires the signature of the patient or authorized person.” As noted in the Code of Practice, Right 7(6) of the Code requires consumers’ consent to be in writing in certain circumstances. The requirement for written consent is traditionally met by the consumer signing their name on a consent form confirming that they have the relevant information and have given their informed consent to the proposed

---

<sup>1</sup> Opinion 07HDC11318 where former Commissioner Ron Paterson decided that, in the circumstances (major elective surgery and a cautious consumer), a surgeon who found out that a consumer’s risk factors had increased, should have not proceeded with surgery and should have woken the consumer to discuss the increased risk factors

service. However, Right 7(6) is not explicit about what constitutes informed consent “in writing” and does not specify that a signature is always necessary.

*Right 6 – the Right to be fully informed*

In this section of the Code of Practice, I suggest including a statement about open disclosure. The Deputy Commissioner recently considered a situation where a dentist did not disclose to a consumer that an instrument used during a root canal procedure had separated in the consumer’s root.<sup>2</sup> In that case, the Deputy Commissioner was very concerned that there were at least four opportunities for the dentist to tell the consumer what happened. The Deputy Commissioner noted that by failing to provide the consumer with information about the results of the procedure and by failing to disclose the reason for the re-treatment, the dentist breached Right 6(1)(g) of the Code.

*Typographical errors*

I note that there is a typographical error throughout the Code of Practice in that the full reference to the Code should ensure that there is an apostrophe at the end of “Consumers”.

*References and suggestions for further reading*

I recommend that you draw the readers’ attention to more recent HDC publications available on our website [www.hdc.org.nz](http://www.hdc.org.nz). In particular, “Fact Sheet 1: Consent for consumers who are not competent” (copy **enclosed**) seems especially relevant.

**Conclusion**

Thank you for the opportunity to comment on the Code of Practice. I trust that you find my comments helpful.

Enc Fact Sheet 1

---

<sup>2</sup> Opinion 12HDC00437