

Consent Situations

Procedures for Interpreters & Health Care Practitioners

Imparting accurate information to clients of non-English speaking backgrounds is particularly crucial in consent situations. Specific procedures are to be followed by health care practitioners and interpreters in obtaining patient consent for surgery, treatment or research. These procedures are stipulated in Section 7 of the NSW Health Department Standard Procedures for the Use of Health Care Interpreters, Circular 94/10.

It is important that all interpreters and health care practitioners are familiar with Section 7 in order to facilitate adherence to these procedures. Specifically Section 7 states:

Consent for Surgery or Treatment

- 7.1 It is imperative that a professional interpreter is present to ensure patient consent and understanding when a recommendation for surgery, treatment or research is communicated to a non-English speaking patient.
- 7.2 The consent form signed by a non-English speaking patient must contain a statement signed by the Health Care Interpreter that s/he has interpreted the content of the form and all the information supplied by the treating practitioner to the patient.
- 7.3 Bilingual consent forms may be used where available but these should not replace the use of a Health Care Interpreter who can enable the patient to ask questions in order to make an informed decision.
- 7.4 Although telephone interpreting through TIS is a quick alternative where a Health Care Interpreter cannot be obtained, the consent obtained over the phone may not be valid.
- 7.5 Consent for treatment may not be valid if it is obtained through a child or family members, other patients, visitors or non-accredited staff acting as interpreters.

Specific Interpreter Guidelines

Interpreting Mode

- In consent situations face-to-face interpreting should be provided. Telephone interpreting should only be provided when face-to-face interpreters are not available and the procedure is required in an urgent situation. It is desirable that a face-to-face interpreter appointment be arranged as a follow up to enable further communication to occur.

Telephone interpreting may not be as reliable as face-to-face interpreting as it does not allow for interpretation of other non-verbal forms of communication such as body language and gestures. It may also be easier to misunderstand what is said or not heard, clearly over the telephone. On this basis face-to-face interpreting is the preferred option.

- The Health Care Interpreter Service should be the first point of contact in cases where an interpreter is required for obtaining consent for medical treatment. Only in the most unusual cases should TIS be used.
- The use of children or other family members, other patients, visitors or non-accredited staff may result in inaccurate interpreting. In the case of family members there is the possibility that decisions could be made for the patient rather than the patient giving their own independent consent.
- The provision of new technology such as telemedicine involving video screens with audio is also a source of interpreting that may be developed. However, this should not be used as a substitute for obtaining consent face-to-face except in unusual or difficult cases (such as rural and remote areas).

Interpreter Role

- Health Care practitioners have the following legal obligations to all patients:
 1. Patients must be provided with sufficient and material information about the Condition, investigation options, treatment options, benefits, possible adverse effects or complications, and the likely result if treatment is not undertaken, in order to be able to make their own decision about undergoing an operation, procedure or treatment.
 2. The consent of the patient to undergo a proposed procedure, operation, or treatment must be obtained and, in appropriate cases, should be documented in writing.

Failure to do this could result in legal action against a practitioner for either assault or negligence and may contravene the provisions of the Anti-Discrimination Act, NHMRC Guidelines and the NSW Department of Health Circular 94/10.

- While it is the practitioner's responsibility to ensure that these obligations to the patient are discharged, the interpreter has the role of facilitating the provision of information to patients by interpreting both the information provided by the practitioner to the patient and the patient's responses. The interpreter should also assist in obtaining the consent of the patient by interpreting the consent form when it is read to the patient by the treating practitioner.
- Information concerning the treatment should be provided to the patient before the form is interpreted. The practitioner can use the form as a guide when providing information to the patient. If in interpreting the information provided by the practitioner to the patient, it appears to the Interpreter that the patient does not

understand what is being said and the practitioner is unaware of this situation, the interpreter may inform the practitioner in attendance of this judgement. This is likely in cases where the non-verbal gestures of the patient indicate to the interpreter that the message is not being understood. If these gestures are not recognised by the practitioner, then the interpreter must inform the practitioner.

- After the interpreter has interpreted this information for the patient, and the practitioner and interpreter are satisfied that the patient understands the information provided, the treating practitioner should read out the form and the interpreter should interpret this and assist in facilitating the signing of the consent form. In the case where the treating practitioner has not read the form or only read part of the form, then the interpreter should sight translate **all** of the form content to the patient. In all cases, the interpreting of the form content to the patient must be independent of an in addition to the health care practitioner's explanation to the patient.
- In respect of section 7.3 of the Standard procedures, the interpreter must sign the consent form to indicate that s/he has interpreted the content of the form and all of the information supplied by the health care practitioner, and the patient's responses. Once all of the form has been interpreted and explained, the consent form can be signed. If this is not done the interpreter should not sign the form.
- Interpreters should also write a brief statement in the patient notes indicating that interpreting has been provided for the patient in the presence of a health care practitioner X eg "interpreted for Dr X and consent obtained".

Patients' Refusal to Sign

- If the patient does not sign the consent form then the interpreter should not sign the consent form, but should write in the patient notes, indicating that the interpreter was present during the interview and that the patient has declined to sign the consent form.

Consent Forms

- All consent forms should contain a section for the interpreter to sign. For example:

Discussion and consent interpreted by.....(signature)

Interpreter's Name.....(block letters)

Date.....

If the consent form does not contain such a section the interpreter should write this by hand. It is advisable that the interpreter then notify the HCIS office of the location in which consent forms are being used without a typed section for the interpreter. This will enable follow up to occur with these locations, regarding this requirement of the Standard Procedures Section 7.2.

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