

Person Responsible

Office of the Public Guardian – Fact sheet

For patients aged 16 years or older, medical and dental practitioners must seek consent before giving treatment. In most cases, if the patient is unable to provide their own consent, the practitioner must seek consent from the patient's 'person responsible'. This is a requirement of the Guardianship Act 1987.

Who is the person responsible?

The person responsible for a patient could be one of the following, in order of priority:

- ✓ an appointed guardian (including an enduring guardian) with the medical and dental function or, if there is no guardian
- ✓ the most recent spouse or de facto spouse where there is a close and continuing relationship 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

When does the person responsible consent to treatment?

In many cases, a person will be able to consent to their own treatment. If a doctor or dentist assesses a patient to lack capacity to understand the treatment, and provide their own consent, they will identify and seek consent from their person responsible.

If the people involved in the patient's life disagree about the patient's capacity, they can request a specialist capacity assessment. Alternatively, they can make an application to the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT). If there is no person responsible practitioners can seek consent from the Guardianship Division of NCAT on 02 9556 7600 or 1800 463 928.

What are the rights and responsibilities of the person responsible?

The doctor or dentist needs to give the 'person responsible' all the information they would

ordinarily give a patient with capacity to consent. You should expect to be informed of:

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

The doctor or dentist must seek your consent before treating the patient. That is, you can say "yes" or "no" to the proposed treatment, and can seek a second opinion.

If the person responsible cannot or will not make a decision, they must decline in writing. The next person in the list will then become the person responsible. A doctor or dentist can remove the person responsible from their role by certifying, in writing, that the person responsible is not capable of carrying out their role.

In limited cases, for example if the doctor considers the treatment to be urgent and necessary, they can treat without the person responsible's consent. There are also certain circumstances where the person responsible cannot provide consent. These include when it is a 'special treatment' or if the person is objecting to the treatment. See over the page for details.

What if you have a complaint about a doctor?

To lodge a complaint about a doctor you can call the Health Care Complaints Commission on 02 9219 7444 or 1800 043 159, or visit their website www.hccc.nsw.gov.au

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Summary Guide: Medical and dental consent for adults 16 years and over

Type	Description of treatment	Who can consent?
Urgent treatment	Treatment considered urgent and necessary to: <ul style="list-style-type: none"> -save a patient's life -prevent serious damage to health -prevent or alleviate significant pain or distress (not including special treatment) 	No consent needed
Major treatment	<ul style="list-style-type: none"> • Any treatment involving general anaesthetic or sedation (except as listed in minor below) • Medications affecting the central nervous system (except as listed in minor) • Drugs of addiction (except as listed in minor) • Long-acting injectable hormonal substances for contraception or menstrual regulation • Any treatment for the purpose of eliminating menstruation • Testing for HIV • Any treatment involving substantial risk to the patient • Any dental treatment resulting in the removal of all teeth or which significantly impairs chewing 	<p>Person responsible 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 Division of the NCAT can consent</p>
Minor treatment	<ul style="list-style-type: none"> • All treatments (except those listed in major or special) • Treatment involving sedation: <ul style="list-style-type: none"> - for management of fractured or dislocated limbs - for endoscopes inserted through an orifice, not penetrating the skin or mucous membrane • Medications affecting the central nervous system used: <ul style="list-style-type: none"> - for analgesic, antipyretic, antiparkinsonian, antihistaminic, antiemetic, antinauseant or anticonvulsant purposes - only once - for PRN (as required) not more than 3 times per month - for sedation in minor procedures (unless dental) 	<p>Person responsible can consent</p> <p>If no person responsible or the person responsible cannot, will not or is unable to consent, the doctor or dentist 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>
Special treatment	<ul style="list-style-type: none"> • Use of medication affecting the central nervous system where dosage, duration or combination is outside accepted norms • Androgen-reducing medications for behavioural control • Termination of pregnancy • Treatments intended or likely to result in infertility • Vasectomy and tubal occlusion • Aversives: mechanical, chemical or physical • Any new treatment that has not yet gained the support of a substantial number of doctors or dentists specialising in the area 	Only the Guardianship Division of the NCAT can consent
Objection to major or minor treatment	<ul style="list-style-type: none"> • If the patient indicates, or has previously indicated, that he or she does not want the treatment carried out 	<p>Only the Guardianship Division of the NCAT can consent</p> <p>If the practitioner 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>

How to contact us



Speak to an Information Officer:
02 8688 6070 or 1800 451 510 for callers outside the metropolitan area



You can contact us through the National Relay Service on 1800 882 889



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Email us or visit our website:
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If English is your second language, you can contact us through the Translating and Interpreting Service on 131 450



If the Public Guardian is the guardian for your patient, contact the Public Guardian on 02 8688 2650 or 1800 451 510 for callers outside the metropolitan areas