

**CHIROPRACTORS REGISTRATION BOARD OF VICTORIA  
STANDARDS OF PRACTICE GUIDELINES**

**INFORMED CONSENT**

**March 2007**

**1. INTRODUCTION**

The purpose of these guidelines is to inform and remind all registered practitioners of their obligation to obtain informed consent from their patients prior to examination and or treatment. This is founded in each person's right to make informed decisions about what is to be done to their own body and is covered by the obligation of this Board to minimize the risk to which the public is exposed.

This document is not intended to be a substitute for specific legal advice on this issue.

**2. GENERAL COMMENTS**

Whilst there are several types of consent it is suggested that informed consent be obtained for both examination and treatment procedures. Informed implied consent may be satisfactory for examination purposes but explicit informed consent is essential before treatment procedures commence.

Since *Rogers v Whitaker*<sup>1</sup>, the legally complex issue of informed consent has become increasingly important to health care practitioners. Informed consent is where the patient consents to care with a knowledge and understanding of their diagnosis, the proposed care and the material risks associated with that care, other treatment options and the possible consequences of no care at all.

The following points (in italics) emerged from the South Australian case *F v R*<sup>2</sup> as "the complex of factors" upon which depended "the amount of information or advice which a careful and responsible doctor would disclose."

In the *Rogers*'s case, the High Court agreed that this complex of factors must be considered in deciding whether to disclose information of risk in any procedure. Further, the High Court stated that "a risk is material if, in the circumstances of the particular case, a reasonable person in the patient's position, if warned of the risk, would be likely to attach significance to it or if the medical practitioner is or should reasonably be aware that the particular patient, if warned of the risk, would be likely to attach significance to it."

- *The nature of the matter to be disclosed* - More likely and more serious harms require disclosure.
- *The nature of the proposed procedure* - Complex interventions require more information, as do procedures where the patient has no illness.

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<sup>1</sup> (1992) 175 CLR 479

<sup>2</sup> (1983) 33 SASR 189

- *The patient's desire for information* - Patients who ask questions and make known their desire for information should be accommodated.
- *The temperament and health of the patient* - Anxious patients and patients with health problems or other relevant circumstances that make a risk more important for them (such as their medical condition or occupation) may need more information.
- *The general surrounding circumstances* - The patient's specific circumstances and the type of care proposed may require other information to be disclosed.

It is important to understand that the obligation to obtain informed consent may not be delegated i.e. the practitioner must personally provide information and be satisfied that it is understood and that informed consent is being provided.

### **3. GUIDELINES**

As the primary aim of Informed Consent is to allow a person to be informed in matters relating to their health prior to freely making a decision about their care, the following factors should be considered in addition to the disclosure of material risks:

- All information provided to the patient should be reasonable and accurate, and if required substantiated by a reasonable body of knowledge.
- Any consent should be freely given. There should be no coercion or pressure exerted in an attempt to gain consent.
- A reasonable diagnosis or working hypothesis based on a proper history and examination should be communicated to the patient.
- An explanation of the treatment recommended, its likely duration, expected benefits and cost should also be communicated to the patient.
- Any alternative(s) to the proposed care and their relative risks/benefits as well as the likely consequences of no care
- The patient's right to refuse consent, seek clarification or obtain a second opinion.
- The ability of the patient to properly understand the information. This entails a consideration of how the information is presented and the capabilities of the patient (eg age, language difficulties, learning difficulties).
- The provision for consent by a parent or guardian in cases when the patient is unable to give proper consent themselves. A young person may give or refuse to give consent if they are sufficiently competent. Competence is not governed by age alone, as assessment of their maturity and cognitive ability must also be taken into consideration.
- Although a written form of consent is preferred, verbal consent is sufficient if all of the same issues are covered and it is recorded in detail in the patient's treatment record. It is strongly recommended that any record of consent is witnessed by both practitioner and patient.
- The informed consent obtained relates to the proposed treatment. A change in treatment mode would require further consent.
- For more detail and further advice about informed consent it is recommended that you obtain specific legal advice and contact your professional body and your insurer to discuss any additional recommendations and requirements.