

## PERSON RESPONSIBLE

### **Medical and dental practitioners have a legal and professional responsibility to get consent to treatments before treating any patient.**

The patient usually gives this consent. If the patient is not capable of consenting to their own treatment, the practitioner should seek consent from the patient's 'person responsible'. This is required by the Guardianship Act 1987.

### **Who is 'person responsible'?**

A 'person responsible' is not necessarily the patient's next of kin. A 'person responsible' is either:

- A guardian (including an enduring guardian) who has the function to consent to medical, dental and health care treatments or, if there is no guardian:
- the most recent spouse or de facto spouse with whom the person has a close, continuing relationship. 'De facto spouse' includes same sex partners or, if there is no spouse or de facto spouse:
- an unpaid carer who is now providing support to the person or provided this support before the person entered residential care or, if there is no carer:
- a relative or friend who has a close personal relationship with the person

If a person identified as being a 'person responsible' declines in writing to exercise the function of 'person responsible' or a medical practitioner or other qualified person certifies in writing that the person identified as 'person responsible' is not capable of carrying out those functions, then the person next in the hierarchy is the 'person responsible'.

If the treatment is special treatment, the practitioner must seek consent from the Guardianship Tribunal before treating the person.

If there is no 'person responsible' and the treatment is major treatment, the practitioner must seek consent from the Guardianship Tribunal before treating the person.

If the practitioner considers the treatment to be urgent and necessary, they may treat without consent.

For more information about urgent, special, major and minor treatment, see summary guide overleaf.

### **Rights and responsibilities of a 'person responsible'**

If you are the 'person responsible' for someone who cannot consent for themselves you have a right and a responsibility to know and understand:

- What the proposed treatment is
- What the risks and alternatives are
- That you can say "yes" or "no" to the proposed treatment
- That you can seek a second opinion

The practitioner has a responsibility to give you this information and seek your consent to the treatment before treating the person.

### **Is there anything a 'person responsible' cannot do?**

When someone is incapable of consenting to their own treatment, a person responsible cannot:

- Consent to special medical treatment, such as sterilisation operations, terminations of pregnancy and experimental treatments
- Consent to a treatment if the patient objects to the treatment

### **Complaints**

Complaints about practitioners can be referred to the Health Care Complaints Commission on 02 9219 7444 or 1800 043 159

### **Need more information?**

**Guardianship Tribunal: Telephone** 02 9556 7600 **Tollfree** 1800 463 928 **TTY** 02 9552 8534

**Email** [gt@gt.nsw.gov.au](mailto:gt@gt.nsw.gov.au) **Web** [www.gt.nsw.gov.au](http://www.gt.nsw.gov.au)

**NSW Public Guardian: Telephone** 02 8688 2650 **Tollfree** 1800 451 510 **TTY** 1800 882 889

**Email** [informationssupport@opg.nsw.gov.au](mailto:informationssupport@opg.nsw.gov.au) **Web** [www.lawlink.nsw.gov.au/opg](http://www.lawlink.nsw.gov.au/opg)



## Summary Guide to medical and dental consent for adults 16 years and over

Category	Treatment	Who can consent?
Urgent	<p>Urgently necessary to</p> <ul style="list-style-type: none"> <li>save person's life</li> <li>prevent serious damage to health</li> <li>prevent or alleviate significant pain or distress, except if the treatment is special medical treatment (see below)</li> </ul>	No consent needed
Minor	<p>All medical and dental treatments – except those listed in major or special. Includes:</p> <ul style="list-style-type: none"> <li>Treatment involving general anaesthetic or other sedation               <ol style="list-style-type: none"> <li>For management of fractured or dislocated limbs</li> <li>For endoscopes inserted through an orifice, not penetrating the skin</li> </ol> </li> <li>Medications that affect the central nervous system               <ol style="list-style-type: none"> <li>When used for analgesic, antipyretic, antiparkinsonian, antihistaminic, antiemetic, antinauseant or anticonvulsant purposes</li> </ol> </li> <li>PRN not more than three times a month</li> <li>Sedation in minor procedures when such medications are used only once</li> </ul>	<p>'person responsible' can consent.</p> <p>If there is no 'person responsible' or the 'person responsible' cannot be located or cannot/will not respond and patient is not objecting, the doctor or dentist may treat without consent. They 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>
Major	<p>Any medical or dental treatment involving general anaesthetic</p> <ul style="list-style-type: none"> <li>except those listed in minor medications that affect the central nervous system</li> <li>except those listed in special and minor</li> <li>long-acting injectable hormonal substances for contraception or menstrual regulation</li> <li>Any treatment for the purpose of eliminating menstruation</li> <li>Testing for HIV</li> <li>Any treatment involving substantial risk</li> <li>Any dental treatment resulting in removal of all teeth or significantly impairing ability to chew food</li> </ul>	<p>'Person responsible' can consent. If there is no 'person responsible' or the 'person responsible' cannot be located or cannot/will not respond, only the Guardianship Tribunal can consent.</p> <p>Request and consent must be in writing or, if not practicable, later confirmed in writing.</p>
Special	<ul style="list-style-type: none"> <li>Sterilisation</li> <li>Termination of pregnancy</li> <li>Drugs of addiction used for more than 10 days in 30 – except when used to treat cancer or for palliative care of terminally ill patients</li> <li>any treatment that involves the use of an aversive stimulus, whether mechanical, chemical, physical or otherwise</li> <li>experimental treatments</li> <li>any new treatment that has not yet gained the support of a substantial number of doctors or dentists specialising in the area</li> <li>use of medication that affects the central nervous system when dosage, duration or combination is outside accepted norms</li> <li>Androgen-reducing medication for behavioural control</li> </ul>	Only the Guardianship Tribunal can consent
Objections to non-urgent treatment	If the person or the 'person responsible' indicates or previously indicated that they do not want the treatment carried out	Only the Guardianship Tribunal can consent