



## CNA HealthPro

### Informed Consent and the Minor Patient

*By W. Patrick Sullivan, Esq.*

Most dentists are aware that, as a general rule, an unemancipated minor's consent to treatment is not valid, and that the consent of a parent or legal guardian must be obtained before treatment is rendered. Yet dentists frequently provide "routine" dental treatment to their minor patients without such consent.

Consider the situation where the parent does not accompany the child to a six-month recall appointment. If, during the clinical exam, you decide that x-rays are required or that one or more carious lesions should be restored, is the consent of the parent (or legal guardian) required before such routine procedures are performed? If the parent cannot be reached by phone, is it prudent to proceed, or should the treatment be deferred until consent can be obtained?

From a liability standpoint, this is a gray area. Arguably, by allowing the child to present alone at the office, the parents have given their implied consent to such routine procedures. Nevertheless, in today's litigious atmosphere where "lack of informed consent" claims abound, this situation may create a conflict between you and the child's parents, even if their only objection is to the additional professional fees.

The informed consent process, which includes a thorough discussion between the dentist and the patient, together with written documentation of that discussion, should be undertaken prior to procedures including, but not limited to, extractions, root canals, crown and bridge, implants, and incision and drainage. It is also recommended for any procedure involving flap reflection, cosmetic dentistry, TMD treatment, orthodontics and IV sedation or general anesthesia, for which a separate consent form is required. The process should include a discussion between the dentist (not just a staff member) and the patient about the nature of the proposed treatment, potential risks and complications, likely benefits, prognosis, alternatives (including referral to a specialist when appropriate), timing and estimated fees. In the case of a minor, the informed consent process must involve the parent or legal guardian.

The informed consent process need not be as detailed for routine diagnostic and treatment measures, compared with the technical specificity that more complex procedures demand. However, the patient must be advised about all treatment and diagnostic procedures with respect to the proposed dental care, including what is to be done and why. The patient does have a right to refuse even the most routine treatment.

In the case of an unemancipated minor, unaccompanied by a parent or legal guardian, what can you do to minimize potential conflict and reduce liability risks if such routine treatment is to be rendered?

First, make a professional judgment as to whether any delay in treatment will likely be detrimental to the minor patient's dental or systemic health. Ask yourself whether it is in the patient's best interest to proceed with the treatment immediately, or whether treatment can wait until a parent or legal guardian can be contacted.

Next, make a reasonable effort to contact the parent or legal guardian. To that end, patient charts should be updated with cell phone numbers. The dental record should contain documentation of all attempts to reach a parent or guardian.

If you cannot reach a parent or guardian, it is prudent to defer routine treatment or, if necessary, to palliate the patient's condition until a parent or guardian's informed consent can be obtained. Generally, it is acceptable to intervene without parental consent when immediate intervention is warranted due to traumatic injury or other truly emergent conditions.

The verbal consent or signature on a consent form of one parent is adequate. However, it is essential that the parent granting consent is legally authorized to do so. Divorces can often be highly contentious, to the point where some divorce decrees have stipulated that a non-custodial parent be stripped of parental rights. If a natural parent has no parental rights, that individual is precluded from granting consent on behalf of his or her child.

The right to legally grant consent for a minor child is independent of any financial obligations or arrangements that may have been made during divorce proceedings. Consequently, the parent paying your fees may or may not be legally authorized to grant consent.

Occasionally, divorced parents will disagree regarding the granting of consent for their child's treatment. From a practical perspective, it would be inadvisable to proceed until someone – a parent, grandparent, aunt, uncle or other party – first assumes financial responsibility for the care. Keep in mind that one of the most effective risk management techniques is to simply say "no" to unreasonable requests from patients and parents.

If an unaccompanied minor child presents for an appointment for simple or routine treatment that has already been discussed and consented to by the parent or guardian, it is permissible to proceed with treatment. Be certain you do not perform any treatment transcending the limitations of the prior consent.

Even if consent has already been given, there may be certain appointments when the planned treatment is rather involved and you wish to have a parent accompany the child. You may institute an office policy that requires a parent to be present for treatment to proceed. If you have such a policy, clearly inform parents that their presence will be necessary at that time.

Finally, I would suggest that all adult patients and parents or guardians of minors be required to sign an "Admission to the Practice Agreement." This document provides for, among other things, the consent of the patient (or the patient's parent or legal guardian) to routine dental procedures, as well as treatment and diagnostic tests, including x-rays, that are deemed necessary in the dentist's professional judgment. If a conflict arises later, the signature of the parent or legal guardian on such a document will, at a minimum, demonstrate that implied consent was granted by the parent or legal guardian to routine dental procedures for the minor patient.

The age of majority varies from jurisdiction to jurisdiction, as does the law concerning when a minor is deemed emancipated. I suggest you contact an attorney in your area who specializes in malpractice defense work for answers to these questions and for any assistance you may need in drafting an "Admission to the Practice Agreement."

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