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Some Reminders about Informed Consent

The AAPD's Council on Clinical Affairs developed an excellent *Clinical Guideline on Informed Consent* that was adopted by the membership in 2005.¹ This column will amplify a few key points from this guideline.

Members call from time to time asking whether AAPD can provide a standard informed consent form. As indicated in the guideline, this is not possible because:

"Statutes and case law of individual states govern informed consent. Some states allow oral discussions, which should be documented in the medical record, while others may require written consent. Oral health practitioners should review applicable state laws to determine their level of compliance."

However, the AAPD guideline does provide a useful list of the **basic elements of a written informed consent form**:

1. name and date of birth of pediatric patient;
2. name and relationship to the pediatric patient/legal basis on which the person is consenting on behalf of the patient;
3. description of the procedure in simple terms;
4. disclosure of known adverse risk(s) of the proposed treatment specific to that procedure;

5. professionally-recognized or evidence-based alternative treatment(s) to recommended therapy and risk(s);

6. place for custodial parent or legal guardian to indicate that all questions have been asked and adequately answered;

7. places for signatures of the custodial parent or legal guardian, dentist, and an office staff member as a witness."

The AAPD guideline also emphasizes the need for true communication, not just going through the motions to complete a form (emphasis added in **bold**):

"A patient's or parent/guardian's signing a consent form should not preclude a thorough discussion. Studies have shown that even when seemingly adequate information has been presented to patients, their ability to fully understand the information may be limited. Supplements such as informational booklets or videos may be helpful to the patient or custodial parent or legal guardian in understanding a proposed procedure. **The oral discussion between provider and patient, not the completion of a form, is the important issue of informed consent.** The consent form should document the oral discussion of the proposed therapy, including risks, benefits, and possible alternative therapy."

From a risk management perspective, the ADA's publication *Frequently Asked Legal Questions: A Guide for Dentists and the Dental Team* summarizes it this way:

"It is important to remember that having a patient sign a written consent does not excuse you from the responsibility of having an adequate discussion with the patient about the proposed treatment. Be careful to avoid falling into the habit of routinely obtaining signed consent forms with no discussion other than "sign here so I can take care of you." Doing so would raise a very real question of whether you actually secure informed consent, and could significantly impair the defense of a malpractice lawsuit."

The sensitivities are further heightened when you are a pediatric health care provider obtaining informed consent from a parent or guardian rather than directly from a patient.

The AAPD guideline also advises that:

"Consent for sedation or behavior guidance techniques such as protective stabilization (i.e. immobilization) should be obtained separately from consent for other procedures."

Careful attention to informed consent is especially important due to the legal trend that "[m]any states include the right to give informed consent prior to treatment in their patient bill of rights, which thereby creates a statutory cause of action for a failure to honor this right."²

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(Footnotes)

1 This can be accessed on the AAPD Web site at: http://www.aapd.org/media/Policies_Guidelines/G_Informed%20Consent.pdf

2 From presentation on *Fundamentals of Provider Liability* by Kathleen M. Boozang, J.D., LL.M., associate dean and professor of law, Seton Hall University Law School, Newark, N.J. presented at the American Health Lawyers Association program on *Fundamentals of Health Law*, Dec. 2-4, 2007, Chicago, Ill.