INFORMED CONSENT FOR THE PEDIATRIC DENTAL PATIENT:

OBLIGATIONS, RISKS, CHALLENGES, AND BENEFITS

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WHAT IS INFORMED CONSENT AND WHY IS IT REQUIRED?

There is a long history supporting the right of every person to be free from bodily invasions without consent.[1] Consent to health care, in its early paternalistic form, simply required a determination as to whether a patient consented to a particular procedure – yes or no. **In 1957, the first case to articulate the concept of informed consent provided that "[a] physician violates his duty to his patient and subjects himself to liability if he withholds any facts which are necessary to form the basis of an intelligent consent by the patient to the proposed treatment**."[2]

As stated in the American Academy of Pediatric Dentistry (AAPD) informed consent best practices document, "[i]nformed consent is the process by which a health care provider gives relevant information concerning diagnosis and treatment needs to a patient so that the patient can make a voluntary, educated decision to accept or refuse treatment."[3] It is an ethical and legal obligation of a health care provider to support informed self-determination by a patient. It is a process of communication and rapport building that ensures a health care provider-patient partnership to protect a patient's health; informed by the patient's needs, desires, and abilities through active participation.

Informed consent is controlled by state law, and although there are general principles that universally apply, **a pediatric dentist should be familiar with the state law in which they practice**.

The general principles of informed consent include the following: 1) making professional disclosure to the person legally authorized to provide consent; 2) obtaining the consent in a timeframe that precedes and is reasonably proximal to the time of the treatment; and 3) ensuring the consent is made voluntarily without duress or fraud. **Failure to properly obtain informed consent may have legal or regulatory consequences for the pediatric dentist, and does not uphold the ethical obligation to promote a positive and productive relationship with patients**.

Obtaining informed consent for the pediatric dental patient involves some unique considerations since the patients being treated are in most cases minors and by state law not legally able to provide consent for their own health care. As a result, challenges may arise as to how to navigate this issue and obtain consent from a legally authorized person, while also including the minor patient in their care to the extent reasonable and possible.

THE TO WHOM, HOW, WHAT, AND WHEN OF PROPER DISCLOSURE

- *To Whom to Make Disclosure.* In most cases informed consent can only be legally obtained from a competent adult person. A competent person is someone not under a legal disability. An adult is a person who has reached the age of majority, which in most U.S. jurisdictions is 18 years of age. A minor is by definition under a legal disability and is also not an adult and therefore is generally unable to consent to their care.

In order to proceed with obtaining informed consent for dental treatment to a minor person, the pediatric dentist will disclose to a legally authorized representative, which is generally at least one of the parents of the minor patient or their legal guardian.[4] The dentist must rely on the parents to provide the dentist with any information that would require one or the other parent to solely consent. This would occur in the event of a legal separation, dissolution or divorce of a marriage,[5] or minor patient's birth out of wedlock and there was no subsequent marriage of the biologic parents to each other or court order granting parental rights.[6] Generally, both parents must have legally adopted a minor patient in order to share parental rights although there may be some exceptions (e.g., marriage of a biological and adoptive parent). While it is the obligation of the parents to inform the pediatric dentist when consenting authority is limited to one parent, as a practical matter, inclusion of a section in the patient intake form that identifies the parent(s) or a third-party as the legal guardian of the minor and attests to their legal right to consent for the child's dental treatment can be helpful. **In the case of one parent having sole authority as the legal guardian to consent or a third-party legal guardian, it is advisable for the pediatric dentist to request a copy of the court document denying access to a parent or ordering the guardian appointment.**

Some states will delineate alternative classes of persons (e.g., grandparents or childcare providers) who, although not the legal guardian, are authorized to provide consent on behalf of a minor such as an individual to whom the minor's parent has given power of attorney or a signed authorization to make health care decisions, or a competent adult who represents themselves to be a relative responsible for the health care of the minor. In these circumstances, the pediatric dentist should request a copy of the power of attorney, signed authorization, or declaration of representation and ensure that it has not expired.[7]

There are exceptions when a minor may be legally authorized to consent to and be an active participant in their own health care, which take into consideration the concept of a "mature" minor. This concept recognizes circumstances where adolescents are old enough to appreciate and understand the nature and consequences of decisions that are being considered. Most U.S. jurisdictions have by statute established judicial process for declaring a minor to be emancipated based on evidence of their independence from the care, custody, and control of their parents and/or maturity and an assessment that it is in the best interest of the minor.[8] Some states have enacted processes for homeless youth to be certified to consent to health care.[9] Other factors that some states use to determine that a minor is emancipated are legal marriage, active military duty, and being a parent. Pediatric dentists should consider the possibility of emancipation when treating adolescents who seek to consent for their own dental care. **While a pediatric dentist may be protected against civil or criminal liability, when in good faith relies upon the representation of a minor that they are legally able to consent to health care,[10] it is recommended that documentation of emancipation (e.g., court order) or other legal status be requested and maintained in the record.[11]**

In addition, there are other exceptions that are specific to the type of treatment that an adolescent may be seeking. For example, many state laws allow for minors based on age to consent

to receive care on their own for drug related conditions,[12] sexually transmitted diseases,[13] and mental health.[14] Exceptions also include adolescent decision making associated with reproductive decisions (e.g., contraception and pregnancy). Each of the above exceptions have a constitutional, statutory, or case law foundation in support of granting health care decision making authority to a mature minor or adolescent.[15]

The information conveyed by the minor to the dentist and the clinical exam findings arising from and related to the above exceptions is protected health information (PHI) under the Health Insurance Portability and Accountability Act (HIPAA) and applicable state law.[16] **The confidentiality of this PHI runs for the benefit of the minor and is generally protected against unauthorized disclosure, including to the legal guardian.** This may pose a conflict for the pediatric dentist when recommending certain treatment to the minor's guardian for a health condition revealed to the pediatric dentist in confidence.

As noted above, in most cases the parent or legal guardian will be the authorized agent for obtaining informed consent. Consideration of the involvement of a minor in the disclosure process with their parent or legal guardian based on their level of maturity and cognitive development is advised. Conflicts can arise between the legal guardian and the minor as to treatment. When the success of treatment is dependent upon the cooperation and compliance of the patient, the pediatric dentist may be in a difficult situation proceeding with treatment that the minor has not personally accepted. **Including the pediatric patient as a participant in the health care provider-patient relationship and including them in the disclosure process may help the legal guardian and the patient in understanding the benefits and risks of proposed and alternative treatment, including non-treatment.** The patient's perspective can identify additional information or context their legal guardian may require to make an informed decision (e.g., risks of watching a condition as opposed to immediately treating a condition to which a minor patient has expressed opposition).

- *How to Make the Disclosure.* **Informed consent is more than getting a signature on an informed consent document; it is a process of disclosure**. Proper disclosure is vital to the later enforceability of the obtained informed consent. Disclosure should preferably be made by the treating provider, whether the dentist, dental hygienist, or other licensed provider. Disclosure for routine procedures can be standardized for consistency across patients. While videos and other visual aids can be used and may be helpful, it is essential that a dental team member, and preferably the treating provider, be available to verify whether the consenting person has any questions.

  It is important to document disclosures consistent with statutory, regulatory, or standard of care requirements. Documentation requirements may be in the form of: 1) required written and signed consent of the patient or legal guardian for "complex" treatment,[17] "procedures where a reasonable possibility of complications … exists",[18] or specific procedures;[19] or 2) required written or electronic or digital recorded verbal consent for care based on delivery mode or location (e.g, mobile dental or public health facility);[20] and 3) required notation in the dental record of informed consent discussions.[21] In circumstances where written and signed informed consent form is not required, it may serve as valuable presumptive evidence that informed consent was obtained.[22]

Proper disclosure requires effective communication to ensure understanding. Understanding is best achieved by avoiding the use of jargon, using clear and unambiguous language, and delivering information with an appropriate pace and volume. Written materials should not require any higher than the sixth to eighth grade reading level. When communicating with non-English speaking persons, it is important to consider whether oral and written translation services are necessary.

For informed consent to be valid it must be obtained without fraud or duress. Disclosures should never be given under false pretenses or in the context of undue influence.

- *What to Include in the Disclosure*? Disclosure should include who will perform the procedure and a description of the procedure in terms the consenting person can understand. The following should be included in the disclosure: 1) the diagnosis leading to the procedure; 2) the nature and purpose of the procedure; 3) the potential benefits of the procedure; 4) the known and inherent risks of the procedure as well as those risks that while improbable are serious and would reasonably be expected to affect the consenting person's decision; 5) alternate procedures or courses of action and their potential benefits and risks: and 6) the option of providing no treatment and its potential benefits and risks. **The goal is to provide sufficient information to the consenting person so that the consent provided is legally defensible. Just as important is to empower the consenting person to make a decision to which they are committed and which allows for them to actively participate in dental care decisions**.

  Pediatric dentists should ensure that disclosure is broad enough to cover potential mid-treatment changes in circumstances such as a patient for whom the full extent of treatment needs cannot be determined until initiating treatment under general anesthesia.[23]

  There are two primary standards for measuring the sufficiency of disclosure: 1) professional standard and 2) materiality standard. The professional standard requires disclosure of factors reasonable practitioners of like training would disclose in the same or similar circumstance.[24] Whereas, the materiality standard requires disclosure of factors that a reasonably prudent person in the position of the patient or their legal representative would consider significant in deciding whether to consent to the proposed treatment.[25] **It is important for the pediatric dentist to follow the standard that is used in their practice jurisdiction.**

  Informed consent should ultimately end in a decision that the consenting person will not later feel a need to dispute regardless of the outcome of the treatment.

  When discussing the risks of treatment, putting them in perspective for the patient and their guardian should be considered while making sure that the possibility and probability of the most serious and irreversible consequences are appropriately presented and explained. However, some statements should be avoided. For example, the pediatric dentist should not guarantee the outcome or success of any treatment. While a breach of guarantee claim is generally unavailable to a patient unless a health care provider assures in a signed writing the results of any procedure,[26] best practice is to clearly represent that treatment outcomes are not completely predictable. Although it is generally preferred that the minor patient be included in discussions about their dental care, the pediatric dentist may determine that in some circumstances, specifically with a young or fearful minor patient, not including them in disclosure of the risks of

treatment is in the best interest of the child. This privilege of the dentist to withhold such information from the patient, referred to as the therapeutic privilege,[27] would not prevent the pediatric dentist from appropriately disclosing this information to the minor's legal guardian.

- *When to Make Disclosure and Obtain the Consent.* Disclosure must be made at a time prior to treatment and should be reasonably proximal to the date of treatment and to the person legally able to provide the resulting consent.

  When a care plan includes treatment by multiple providers, the timing of disclosure and consent needs careful consideration. When a patient is referred for treatment, it is generally the treating provider's, as opposed to the referring provider's, responsibility to obtain informed consent.[28] However, if the sequence of treatment is such that the treating provider's procedure will be delivered after irreversible treatment has been initiated by the referring provider, it is important to coordinate disclosures and consent.

  When a patient requires emergency treatment and obtaining informed consent from a parent or legal guardian is not reasonably feasible under the circumstances without adversely affecting the condition of the patient's health, a pediatric dentist is not required to delay treatment in order to secure informed consent.[29] The patient's conditions and circumstances requiring emergency treatment should be documented in the patient's record and subsequently communicated to the parent(s) or legal guardian.

CONSEQUENCES OF NOT OBTAINING INFORMED CONSENT

The legal ramifications for failure to obtain informed consent or if the informed consent is invalid, include civil legal actions based on negligence and/or breach of contract. These actions are generally based on failure to provide adequate disclosure or the informed consent is found to be invalid. The following are reasons that the informed consent may be found to be invalid: 1) the act consented to is unlawful; 2) the informed consent was obtained from a person not legally able to provide it; 3) the informed consent was too vague; 4) the informed consent was obtained through misrepresentation or by fraud; or 5) informed consent was provided involuntarily under duress. A criminal battery (intentional tort) action may be filed for not obtaining consent such as extending the scope of treatment beyond what was validly consented to. Additionally, disciplinary action may be taken against the pediatric dentist's state dental license for failure to obtain informed consent. The standard of review used for a tort-based informed consent claim may differ from a disciplinary procedure of unprofessional conduct. For example, the tort-based claim will require a showing that the failure to disclose caused actual injury, whereas the unprofessional conduct claim may require a showing that the failure to disclose was a departure from the standard of care that could have caused harm. This distinction recognizes the different purposes of the proceedings; negligence proceedings are intended to compensate for injury whereas disciplinary proceedings are intended to protect the public from harm and rehabilitate licensees.[30]

RISK MANAGEMENT AND BEST PRACTICES

- Adoption of an office policy or checklist regarding dental care decision makers and to whom to make proper disclosure that is consistent with state law can serve as a valuable resource to the dental team.
- Consider carefully where the pediatric patient fits into the disclosure process.

- Do not delegate the disclosure to a person other than the provider unless the provider makes themselves available for questions.
- If the parent or legal guardian (and as appropriate the minor patient) does not ask questions take some time to prompt them to ask or ask them to articulate their understanding of the treatment options. Sometimes intimidation or a lack of understanding may prevent questions from being asked.
- Make disclosure in layman terms and provide communication support as needed, such as translation assistance where language is a barrier or sign language services where there are auditory limitations.
- Written documentation of consent, even if not required, can be helpful in proving fulfillment of your disclosure requirement. **Best practice is to maintain a consistent practice of recording disclosures and consent in the patient's dental record.**
- When providing treatment to a patient that has been referred to you, be sure to obtain informed consent. It would be best practice to develop an understanding with referring providers with regard to the importance of proper disclosure practices.
- The process of informed consent is ongoing and not one and done – it is a continuous process of reinforcing information and understanding.
- Know and comply with the state law and make sure staff also comply. In addition to being familiar with the general informed consent requirements of the practice jurisdiction, there may be dentistry specific provisions with which the pediatric dentist should be knowledgeable (e.g., informed consent with sedation,[31] protective stabilization,[32] informed consent for the use of teledentistry,[33] and informed consent for treatment delivered in a mobile dental facility).[34]
- Obtain legal counsel to advise when necessary.

SUMMARY

Obtaining informed consent is essential for both legally and ethically providing patient care. Failure to properly navigate the disclosure process and legally obtain the informed consent can lead to untoward consequences for the pediatric dentist. Equally important though is the beneficial effect it can have for the dentist-patient relationship. It can and should facilitate better communication between the parties and foster trust. Pediatric patients, through their legal guardians and for themselves, should be active participants in their dental care. The process of disclosure and obtaining informed consent promotes and supports active participation, which can lead to increased compliance and satisfaction with their treatment. This in turn can lead to more enjoyment and fulfillment for the pediatric dentist in their practice.

REFERENCES

1. *See Union Pac. Ry. Co. v. Botsford, 141 U.S. 250 (1891).*
2. *Salgo v. Leland Stanford Jr. Univ. Bd. of Tr., 317 P.2d 170, 181 (Cal. Ct. App. 1957).*
3. *American Academy of Pediatric Dentistry. Informed consent. The Reference Manual of Pediatric Dentistry. Chicago: Ill.: American Academy of Pediatric Dentistry; 2024:554-8, 554. https://www.aapd.org/globalassets/media/policies_guidelines/bp_informedconsent.pdf Accessed July 11, 2025.*
4. *See FLA. STAT. ANN. §743.0645 (West 2025); 410 ILL. COMP. STAT. ANN. 210/2 (West 2025); IND. CODE ANN. §16-36-1-5 (West 2025); WASH. REV. CODE ANN. §7.70.065 (West 2025).*
5. *E.g., OHIO REV. CODE ANN. §3109.04 (West 2025).*
6. *E.g., CAL. FAM. CODE §7611 (West 2025); OHIO REV. CODE ANN. §3109.042 (West 2025).*