

## **Consent Policy and Procedure (Including Incapacity and Advance Directives)**

### **Policy Statement**

The Phyllis Tuckwell Hospice is committed to providing high quality care based on patients giving their informed consent. It is the duty of the clinical staff to ensure that sufficient information is given to patients in a language and form they can understand to enable them to give their consent<sup>1</sup>.

The policy and accompanying procedures will ensure that all care and treatment provided to a patient is done so with the consent of the patient if they are capable of giving this.

The Hospice affirms the right of a competent, informed patient to accept or refuse treatment or other care interventions, and recognises the legal right of a competent patient to refuse treatment, even when it would clearly benefit their health<sup>2</sup>.

Patients' capacity to consent is assumed unless there is evidence to suggest otherwise. Where periods of impaired or fluctuating capacity are to be expected, the patient's needs and priorities should be established and recorded in advance. When a patient is temporarily or permanently unable to give consent to care or treatment clinical staff will act in the patients' best interests<sup>2</sup>, taking into account the views of carers/relatives.

If a patient has made an advance directive, this will be acted upon where the circumstances indicate this to be valid and applicable.

All issues regarding the obtaining of consent, and the assessment of the ability of a patient to do so, are conducted in accordance with the Department of Health Reference Guide to Consent for Examination or Treatment<sup>3</sup>.

### **Background**

"It is a general legal and ethical principle that valid consent must be obtained before starting treatment or physical investigation, or providing personal care, for a patient. This principle reflects the right of patients to determine what happens to their own bodies, and is a fundamental part of good practice. A health professional who does not respect this principle may be liable both to legal action by the patient and action by their professional body. Employing bodies may also be liable for the actions of their staff."<sup>3</sup>

### **Definitions**

**Consent** is a patient's agreement for a health professional to provide care. It may be given verbally, in writing or non-verbally (for example by presenting their arm for their pulse to be taken) which is sometimes called "implied consent".<sup>4</sup>

**Informed consent** meets the following criteria<sup>4</sup>:

- The patient providing consent has the capacity to do so (see Appendix 1);
- The patient's decision is voluntary, made without coercion, undue influence or deceit;
- The patient has received sufficient information, in a way they can understand, about the treatment options available, the nature and effect of the treatment and any substantial risks associated with it, and the consequences of refusing the treatment.

For consent to be valid it must be "informed consent".

### **Capacity to Consent**

Adults are always assumed to have the capacity unless demonstrated otherwise<sup>2</sup> (for guidance on assessing capacity see Appendix 1).

## Incapacity to Consent

A person lacks the capacity to consent if some impairment or disturbance of mental functioning (temporary or permanent) renders them unable to make a decision regarding treatment<sup>5</sup>.

## Patients Best Interests

Best interests should take into account the patient's wishes and beliefs when competent, their current wishes, their general well-being and their spiritual and religious welfare as well as their best medical interests <sup>2</sup>.

## Responsibility/Accountability

Responsibility	Title and detail of responsibilities
Accountability	Chief Executive and Nominated Trustee
Ultimate responsibility	Director of Nursing (Registered manager): Responsible for ensuring that all Clinical staff act in accordance with this policy and accompanying procedures. Ensure that training requirements are attended to.  Medical Director: Responsible for ensuring that medical staff act in accordance with this policy and accompanying procedures.
First line Responsibilities	Senior Clinical Staff: Ensure that staff act in accordance with this policy and the accompanying procedure
All clinical staff	To act in accordance with this policy and procedure

## Scope

The prime responsibility for obtaining patient's consent lies with the health care professional who is to carry out the treatment /procedure. Consent can be sought by another individual if they have sufficient knowledge to give the right information and answer the patient's questions correctly<sup>2</sup>.

Consent is equally valid whether it is expressed verbally, non verbally (implied) or is written<sup>3</sup>.

- **Implied consent** is sufficient for the **majority of care** provided by the Hospice.
- **Oral consent** is sufficient for the **majority of interventions** provided by doctors, nurses and other health professionals (such as commencing a syringe driver, intimate examinations and catheterisation). Oral consent should be recorded in the patient's case notes with relevant details of the discussion, the date and time of the entry, together with the name of the health professional legibly written. Oral refusal of consent for any intervention must also be recorded in the patient's notes in the same manner.
- **Written consent** should be gained when performing paracentesis or inserting a chest drain. It should also be gained if prescribing unlicensed drugs, however, prescription of 'off-label drugs' (i.e. drugs which are licensed but are being used beyond the remit of the licence) do not require written consent as they are used routinely in palliative care<sup>6</sup>.  
If there is any reason to believe that the consent may be disputed later, or if the procedure is of particular concern to the patient, it would be helpful to gain written consent. Written consent is documented on a consent form (Appendix 2) which records the patient's decision and the discussions that have taken place about the procedure. This is signed by the patient and the health professional concerned. The completed form is to be kept in the patient's notes. If any changes are made to the form at a later date these must be initialled and dated by both the patient and the healthcare professional.

The social work department are also required to get written consent (in the form of a patient signature) for referral to Social Services and Primary Care Trust's (PCT's).

**Photography:** Written consent will be obtained from any patient or carer having their photograph taken by a member of staff or volunteer at the Hospice, or a member of the media, for any use other than personal for the patient/carer. The photograph consent form (Appendix 3) must be signed by the person being photographed and witnessed by a member of staff at the time the photo is taken. *It is the responsibility of the person taking the photograph to ensure the consent form is signed and that a copy of it and the photo are given together to the fundraising department.* A copy of the form will be kept in the patient's notes and another by the Director of Fundraising (with the photo), who will be responsible for ensuring the form can be linked with the appropriate photo. If photographs are to be used for clinical or teaching purposes then the health care professional who took the photograph will be responsible for storing it.

All efforts should be made to obtain consent for care and treatment. When there are language or communication barriers, staff will ensure that all reasonable efforts have been made to overcome these, using available communication skills and technology, interpreters, relatives/carers and friends etc. Relatives may be consulted about the best ways to communicate or may be requested to assist with establishing the patient's values and preferences if the patient is unable to express these themselves.

No-one can give consent on behalf of someone else<sup>2</sup>. This may change in the future following on from the Draft Mental Incapacity Bill (June 2003)<sup>5</sup> which would allow someone else to consent on the patient's behalf. If a patient is unable to give consent, care and treatment will continue to be provided which is judged by the clinical team to be in the best interests of the patient<sup>2</sup>, and taking into account the views of carers/relatives<sup>5</sup>. When assessing capacity to consent the clinical team will comply with the guidance set out in Appendix 1 of this policy.

Where there are any concerns or doubts over consent or decision-making, this should be recorded in the patient notes and passed on to the Medical Director or other senior clinical staff.

Competent, informed patients have the right to accept or refuse treatment or other care interventions<sup>5</sup> and this will be respected.

Where a patient has an advance directive, which is considered to be valid, legal and applicable, and which has been brought to the attention of staff, this will be acted upon.

### Monitoring, Review and Compliance

- Policy review 3 yearly, or when legislation, or Department of Health Guidance requires.
- Adherence to the policy will be audited through a yearly audit of patient records by the Practice Development Nurse, to ensure that the records provide full evidence that consent has been obtained in accordance with the principles above.

### Staff training requirements

Training will be provided in the following areas:

- What constitutes consent and obtaining consent.
- Communication skills in establishing the values and preferences of a patient who may be facing periods of incapacity, or establishing these with the carers of the patient.
- Ethical issues regarding care of the dying.

### Compliance with Statutory Requirements

- Private and Voluntary Health Care (England) Regulations 2001, Part 1 Regulation 9 (3a-d)<sup>7</sup>
- National Care Standards Core Standard C2<sup>7</sup>

### Related Hospice policies/procedures

Advance Directives Procedure

Resuscitation Policy and Procedure

## Policy Creation, Approval and Review

	Name	Job Title
Created by	Louise Dallain	Practice Development Nurse
Consulted for comments	Clodagh Sowton	Director of Nursing
	Dr Carey Morris	Medical Director
	Kim Archer	Chief Executive
	Dr Maggie Guy	Assistant Medical Director
	Rebecca Callanan	Nurse Manager
	Allan Smith	Trustee
	Phyllis Tuckwell Hospice Policy Group	A Multi-professional Group
Approved by	Kim Archer	Chief Executive
	Allan Smith	Trustee

Numbering, Approval & Review	
Policy and Version Number	C#5/Version 1
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Review Date	September 2006
Individual Responsible for Policy Review	Practice Development Nurse
Individual Responsible for Audit of Policy	Practice Development Nurse

## References

1. General Medical Council (1998) Seeking Patients' Consent: the Ethical Considerations, London, November (<http://www.gmc-uk.org/standards/CONSENT.HTM>)
2. Department of Health (2001) 12 Key points on consent: the law in England, March (<http://www.doh.gov.uk/consent>)
3. Department of Health (2001) Reference Guide to Consent for Examination and Treatment, March ([www.doh.gov.uk/consent](http://www.doh.gov.uk/consent))
4. Marie Curie (2003) Marie Curie Consent Policy: Guideline Draft, (unpublished data)
5. Draft Mental Incapacity Bill (2003) Presented to Parliament by the Secretary of State for Constitutional Affairs, June (<http://www.icd.gov.uk/menincap/meninc.pdf>)
6. The Association of Palliative Medicine & The Pain Society (2001) The use of Drugs Beyond Licence in Palliative Care and Pain Management, A Position Statement, London
7. Department of Health (2000) National Minimum Standards and Regulations for Independent Health Care, Care Standards Act 2000 & Private and Voluntary Health Care Regulations, London

## Bibliography

BMA (1995) Advance Statements About Medical Treatment: Code of Practice, April

Help the Hospices (2002) Consent Procedure Guidelines, Health Quality Service Guideline Policy & Procedures, London

Help the Hospices (2002) Advance Directive Procedure Guidelines, Health Quality Service Guideline Policy & Procedures, London

BMA (2003) Practical guidelines for doctors, Chapter 12 of Assessment of mental capacity, London ([www.bma.org/ap.nsf/Content](http://www.bma.org/ap.nsf/Content))

## **Appendix 1**

### **Guidelines On Determining Capacity To Consent**

#### **Assessing Capacity to Give Consent**

For a person to have capacity, he or she must be able to comprehend and retain information material to the decision, especially with regard to the consequences of having or not having the intervention in question, and must be able to use and weigh this information in the decision-making process.<sup>3</sup>

#### **What to do if in doubt**

It is a health professional's own responsibility to work within their own competence. If unable to determine a patient's ability to provide valid consent, a second opinion should be sought.

#### **Acting in the Patient's Best Interests**

In all cases involving the treatment of an individual incapable of giving consent, the treatment must be in the patient's best interest. This means that it must be in accordance with a practice accepted at the time by a responsible body of medical opinion skilled in the particular form of treatment in question.

Unless the patient has clearly indicated that particular individuals should not be involved in their care, or unless the urgency of their situation prevents it, you should attempt to involve people close to the patient in the decision-making process.

#### **Respecting the wishes of patients who lack the capacity to consent**

The views of the patient should be taken into account, even though he or she is legally incapable of consenting to medical treatment. If an incapable patient has clearly indicated in the past, whilst possessing the capacity to consent, that they would refuse treatment in certain circumstances (an "advance refusal") and those circumstances arise, you must abide by the refusal<sup>1</sup>. This refusal may be verbal or written.

#### **Mentally Disordered Patients or Those with Learning Difficulties**

The presence of mental disorder or a learning disability does not in itself imply incapacity nor does detention under the Mental Health Act 1983. Each patient's capability for giving consent has to be judged individually in the light of the nature of the decision required and the mental state of the patient at the time.

*Taken from 'Guidelines on Consent to Treatment' Marie Curie Consent Policy*

## Appendix 2

# Phyllis Tuckwell Hospice Treatment Consent Form

*To be retained in patient's notes*

Name..... Date of birth ..... Hospice number.....

**Name of proposed procedure or course of treatment** (include brief explanation if medical term not clear) .....

.....  
.....

### **Statement of health professional** (to be completed by doctor)

I have explained the procedure to the patient including what it will involve, the benefits and risks of any available alternative treatments (including no treatment) and any particular concerns of this patient. In particular, I have explained:

The intended benefits.....  
.....

Serious or frequently occurring risks .....  
.....  
.....

Signed:..... Date ..  
Name (PRINT) ..... Job title .....

### **Statement of patient**

Please read this form carefully which describes the benefits and risks of the proposed treatment. You will be given a copy of it. If you have any further questions, please ask. You have the right to change your mind at any time, including after you have signed this form.

**I agree** to the procedure or course of treatment described on this form.

Patient's signature .....Date.....  
Name (PRINT) .....

Witness signature (optional\*) .....

\*A witness should sign if the patient is unable to sign but has indicated their consent. Hospice staff may not act as witnesses, ideally a witness should be next of kin/carer/friend.

If the patient withdraws their consent they should sign /date here.....

## **Appendix 3**

### **Photography Consent Form**

# **Phyllis Tuckwell Hospice**

Patron: Her Royal Highness *The Duchess of Kent GCVO*



## **Consent Form**

I, ..... consent to my photograph and/or

artwork being used to promote the Phyllis Tuckwell Hospice for informational

leaflets, the annual review, teaching/education slides and any fundraising/promotional

material.

**Signed:** ..... (Patient/Relative)

**Signed:** ..... (On behalf of PTH)

**Designation:** .....

**Date:** .....