



# Informed consent

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## Dear Dianne:

I am a dental hygienist working in a public health clinic. We see many minors with urgent dental needs. We know we are supposed to have a signed consent for any minor patient. However, recently we had a pregnant 16-year-old that does not live at home. She had a large carious lesion on a molar. We were not able to get a signed consent for her because she is estranged from her parents. The patient became very angry when the doctor opted not to treat her without consent. She told us she was emancipated, but she did not have any written verification of that status. She even threatened to sue us and stated rather vehemently that she did not need parental consent. Did we do the right thing? Somehow, it does not feel right to turn away someone with urgent needs simply because we could not get a parent signature.

Also, what about parents who drop their children off for treatment and leave to do errands? Is there a law that requires parents to stay on the premises while their child is being treated?

## Concerned in Maryland

## Dear Concerned:

Your inquiry prompted me to do some research. According to an article on treating minors, a minor who is married, pregnant, or the parent of a child has the same capacity as an adult to consent to medical/dental treatment (<http://irb.jhmi.edu/Guidelines/>

Informed\_Consent\_Minors). Being pregnant means she can give her own consent and does not require the consent of a parent. Therefore, the patient in question was correct in that she did not need outside consent. (This law may vary in other states.)

Informed consent for minors is about a parent or guardian's understanding and willingness to voluntarily agree to proposed treatment after the recommended treatment, alternate treatment options, and benefits and risks of treatment have been thoroughly described to the parent in common language. Informed consent must be voluntary, and originates from the legal right the patient has to direct what happens to his or her body, and from the ethical duty of the health-care provider to involve that patient in his or her own health care. According

to Burton Pollack, DDS, JD, of Stony Brook, N.Y., many instances of malpractice involve the failure to obtain a valid consent for treatment. Lack of consent can be treated by the courts as assault and battery or negligence.

In dealing with parents and minors who are patients of record, there is not a huge likelihood that a clinician would be charged criminally if something happened, such as the child having a seizure or allergic reaction. According to Casey Crafton, DDS, JD, of Columbia, Md., the act of the mother dropping a child off for treatment could be taken as "implied" permission. However, there is always the possibility that something untoward or unforeseen could happen.

Petra von Heimburg, DDS, JD, of Barrington, Ill. ([www.ceprofonline.com](http://www.ceprofonline.com)) offers this perspective: "Every of-

### Some general facts about consent:

- It must be informed and freely given.
- In the case of an emergency, consent can be implied by law.
- Telephone consent is permissible if it contains all the elements of a valid consent, i.e., the parent/guardian is contacted and a third party is listening on an extension.
- It can be obtained by the doctor or an agent of the doctor, such as an auxiliary staff member.
- Written consent is required for some procedures, particularly surgical procedures or those with significant risks. However, consent need not be in writing to be valid.
- Consent may be implied by the actions of the patient when 1) the patient was aware of the need for treatment, and 2) the patient made no objection when treatment began.
- The patient must have an opportunity to ask questions.

office should think long and hard about their policies regarding the treatment of minors. This is an area of the 'judgment call.' For example, I would not suggest that an office allow a parent to drop off a five-year-old and leave the facility. I would also suggest that when the minor (of any age) is undergoing oral surgery that the parent/legal guardian is present. An office should tailor their treatment policy regarding minors to its 'comfort level.'"

From a practical perspective, some offices may feel comfortable being more "liberal" in their policies. Here is a sample letter that could be used:

*Dear Parent,*

*It is the office policy that the parent/legal guardian may leave the facility while the minor is being treated, provided that:*

- *the minor is over the age of 10 years*
- OR
- *the procedure to be done involves routine dental treatment, such as cleaning, fluoride treatment, or fillings, AND*
- *the parent/legal guardian is available by phone, AND*
- *the parent/legal guardian has signed all the required documentation, AND*
- *the parent/legal guardian has informed the office beforehand that he/she will be leaving the facility or that he/she will not be present.*

*We will inform the parent/legal guardian of the time the treatment is expected to be completed. In case the minor is being picked up, we expect the parent/legal guardian to return on time."*

Below is an example of an informed consent for minors.

*I have been informed that the following procedures are necessary for my child:*

*Although every effort will be made to*

*adhere to the proposed treatment plan, unforeseen circumstances or conditions may require a departure from the plan.*

*After treatment, your child may experience pain and swelling. There is a possibility that the child may bite the inside of the mouth or tongue before the anesthesia wears off, and that the child must be instructed not to do so.*

*In addition to local anesthetic, nitrous oxide (laughing gas) is frequently used to make the dental visit less stressful. Although the child is usually alert and awake upon leaving the office, there are rare instances of lingering sedation.*

*If I do not remain in the dental office while my child is receiving dental treatment, I am leaving the treatment up to the doctor's judgment and experience and understand that other treatment may have to be rendered.*

*In case it is necessary to contact me during my child's dental visit, my cell phone number is:*

*Child's Name:*

*Parent or Guardian's Name:*

*Date:*

Finally, the safest course of action is to have a signed consent and ask parents of young children to remain on the premises while dentistry is being provided. Good patient relationships and open communication decrease the possibility of litigation.

**Best wishes, Dianne**