General Optical Council

Supplementary guidance on consent

Contents

About this guidance

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1. This guidance should be read alongside the *Standards of Practice for Optometrists and Dispensing Opticians* which all optometrists and dispensing opticians must apply to their practice.
2. For student optometrists and student dispensing opticians, this guidance should be read alongside the *Standards for Optical Students*.
3. The standards state the following in relation to consent:

Standard 3. Obtain valid consent

3.1 Obtain valid consent before examining a patient, providing treatment or involving patients in teaching and research activities. For consent to be valid it must be given:

- 3.1.1 Voluntarily.
- 3.1.2 By the patient or someone authorised to act on the patient's behalf.
- 3.1.3 By a person with the capacity to consent.
- 3.1.4 By an appropriately informed person. "Informed" means explaining what you are going to do and ensuring that patients are aware of any risks and options in terms of examination, treatment, sale and supply of optical appliances or research they are participating in. This includes the right of the patient to refuse treatment or have a chaperone or interpreter present.

3.2 Be aware of your legal obligations in relation to consent, including the differences in the provision of consent for children, young people and vulnerable adults. When working in a nation of the UK, other than where you normally practise, be aware of any differences in consent law and apply these to your practice.

3.3 Ensure that the patient's consent remains valid at each stage of the examination or treatment and during any research in which they are participating.

How the guidance applies to you

4. This document gives guidance on how to meet the GOC's standard on consent. It does not create new requirements or give legal advice.
5. The word 'must' indicates a mandatory requirement, for example, registrants must comply with the law and must meet the GOC's standards.
6. You should use your professional judgement to apply this guidance to your own practice and the variety of settings in which you might work.
7. If you are not sure about how to proceed in a specific situation, you should ask for advice from appropriate professional colleagues, your employer, your professional indemnity insurance provider, your professional or representative body, or obtain independent legal advice.
8. Student optometrists and student dispensing opticians should also seek advice from their tutor, supervisor or training provider.
9. In some circumstances gaining consent can be delegated to other colleagues. However, you remain responsible for ensuring valid consent has been given, even if other staff members are involved in the process of gaining consent.

Principles of consent

10. It is a general legal and ethical principle that valid consent must be obtained at the point of care and throughout treatment. This principle reflects the right of patients to determine what happens to their own bodies and make informed choices when purchasing optical appliances. Valid consent is a fundamental part of good practice.

Types of consent

11. Patients can give consent in a variety of ways, all of which are equally valid.

    a. *Explicit consent*

    This is when a patient gives you specific permission to do something, either oral or written. You should obtain explicit consent where the procedure, treatment or care being proposed is more invasive and/or has greater risks involved.

    Examples of this include, but are not limited to, moving equipment close to a patient, using a pupilometer or carrying out a physical procedure such as instilling drops, inserting a contact lens or fitting spectacles.

    b. *Implied consent*

    This is when consent can be assumed from a patient's actions, for example, by placing their chin on an instrument such as an autorefractor following an explanation of the test involved.

12. You must use your professional judgement to decide what type of consent is required, taking into account the individual patient's needs, expressed expectations and circumstances, as well as the associated risks. For more information on how to record consent please refer to paragraph 43: 'Recording consent'.

Obtaining valid consent

13. In order for consent to be valid it must be given:
    a. voluntarily;
    b. by an appropriately informed person; and
    c. by a person who has the capacity to consent. If a patient lacks the capacity to consent then this should be obtained from someone authorised to act on the patient's behalf.

Voluntary consent

14. Voluntary consent means that the decision to consent or not to consent is made by the patient themselves based on informed consideration. Patients must not be coerced by healthcare professionals, relatives or others to accept a particular type of treatment or care, or in the sale and supply of optical appliances. You should be aware of situations in which patients may be vulnerable, for example, in domiciliary settings.

Informed consent

15. Obtaining consent is part of an on-going discussion and decision making process between you and your patient rather than something that happens in isolation.

16. You should satisfy yourself that the patient has in some way consented to all aspects of the care you are providing.

17. When obtaining consent you must provide your patient with clear and accurate information presented in a way that they can understand.

18. You must use your professional judgement to determine the most appropriate way of providing information to a patient. This could be in writing, including in a leaflet, or by talking to the patient, whether before or during their appointment.

19. Registrants should make appropriate enquiries to help determine whether a patient has any particular information or communication problems as this may influence which type of consent you obtain and how you record it.

20. You must consider any disabilities, literacy or language barriers that may affect a patient's understanding and amend your communication approach to take account of this.

21. You should not make assumptions about the patient's level of knowledge or understanding and you should give them the opportunity to ask questions and take account of and respond to any concerns or expectations they may have expressed.

22. Consent cannot be implied simply on the basis of a patient having attended an appointment, as the patient may not be sufficiently informed to provide valid consent. Consent cannot be presumed because it was given on a previous occasion. You must get a patient's consent on each occasion that it is needed, for example, when there is a change in treatment or service options.

Capacity to consent

23. In order for consent to be valid it must be given by someone with the capacity to consent.

24. 'Capacity' refers to your patient's ability to:
    a. understand and retain information relevant to the decision required relating to their treatment or care;
    b. weigh up the information provided and the options available (including the consequences of not consenting); and
    c. communicate their decision (orally, by signing or by any other means of communication).

Assessing capacity

25. As a professional, you will need to assess whether your patient has the capacity to consent. Most adults are presumed to have the capacity to consent but there is a legal framework outlining how capacity is assessed in adults, young people and children across the UK. Please refer to our legal framework on the GOC's website for further detail.

26. Your assessment of capacity should be objective and you should bear in mind the principle that, where possible, patients should be assisted to make informed decisions about their treatment and care.

27. You must not assume that a patient lacks capacity based just upon their age, disability, beliefs, condition or behaviour, or because they make a decision you disagree with.

28. You must make an assessment of your patient's capacity based on their ability to make a specific decision at the time it needs to be made. There may be some circumstances where a patient may be capable of making some decisions but not others.

29. In some situations, a patient may be able to understand the relevant information if they are given an appropriate explanation, such as by using simpler language or visual aids. In these situations, the patient must be considered as having capacity and you must take reasonable steps to communicate the relevant information in a way the patient understands to enable them to consent (or not to consent).

30. You must not assume that because a patient lacks capacity on one occasion, or in relation to one type of service, that they lack capacity to make all decisions or the capacity to make decisions at all times.

31. A patient's capacity to consent may be temporarily affected by a variety of other factors, for example, illness, prescribed medication, shock, panic, fatigue, confusion, pain or the effects of drugs or alcohol.

32. The existence of these factors should not lead to an automatic assumption that the patient does not have the capacity to consent. Instead you should use your professional judgement to make a decision based on all of the circumstances and the information reasonably available to you.

33. In some circumstances it may be appropriate to defer the decision until the temporary effects subside and capacity is restored.

When a patient lacks capacity

34. If your patient is not able to make decisions for themselves the law sets out the criteria and processes to be followed. This may also grant legal authority to certain people to make decisions on behalf of patients who lack capacity.

35. For more advice on when a patient lacks capacity please refer to our legal framework on the GOC's website.

Further support and training

36. If you are unsure about a patient's capacity, you should get advice from your employer, other senior colleagues, health and social care professionals or people involved in their care. If you are still unsure you may need to consult your professional or representative body or obtain legal advice. Any advice you get or assessments carried out should be accurately recorded, along with the outcome.

37. If you need to develop your skills in assessing capacity you should undertake further training as appropriate.

Refusing or withdrawing consent

38. A person with capacity has the right to refuse treatment or care or to withdraw consent at any time. You must respect their decision even if you believe the treatment or care to be in their best interests.

39. In these circumstances you should clearly explain the consequences of their decision but you must make sure that you do not pressure the patient to accept your advice; if the patient agrees only as a result of pressure they perceive was put on them, then this may not be considered valid consent.

40. You should make a record if a patient refuses or withdraws consent. This should include the discussions that have taken place and the advice you have given. If the patient has given a reason you should include this in your notes. However, the patient is not required to give a reason for refusing or withdrawing consent.

41. If you believe that there is a risk of serious harm to the patient or others due to their decision to refuse a service or treatment, you must raise this issue with appropriate healthcare colleagues or people involved in their care, and your employer (if applicable). Consider getting legal advice if necessary.

42. For young people and children who refuse or withdraw consent, the legal framework is more complex. Please refer to our legal framework on the GOC's website for more detail.

Recording consent

43. Standard 8 in the *Standards of Practice for Optometrists and Dispensing Opticians* and standard 7 in the *Standards for Optical Students* relates to maintaining adequate patient records. As a general principle, you must maintain clear, legible and contemporaneous patient records.

44. You should use your professional judgement to determine when and how to record consent based on proportionality, risk, the patient's needs and circumstances and type of treatment or care.

45. You should make a record if a patient refuses or withdraws consent.

Consent to share patient information

46. Information in a patient's record is subject to professional, ethical and legal duties of confidentiality. Most patients understand and expect that some confidential information will be shared between health and social care professionals in order to provide their care.

Implied consent

47. As a regulated optical professional you may rely on implied consent to share confidential information with those who are providing (or supporting the provision of) direct care to the patient if you are satisfied that all of the following apply:
    a. the person accessing or receiving the information is providing or supporting the patient's care;
    b. information is readily available to patients explaining how their information will be used (for example, in leaflets, posters, on websites or face to face), and they have the right to object;
    c. the patient has not objected; and
    d. that anyone to whom confidential information is disclosed understands that it is given to them in confidence, which they must respect.

48. Patients should not be surprised to learn about how their personal information is being used, accessed or disclosed. If information is being used in ways that patients would not reasonably expect, you should seek explicit consent for this from the patient.

49. The patient has the right for their wishes to be respected if they object to particular personal information being shared within your own healthcare team or with others involved in their care – unless disclosure would be justified in the public interest, is required by law, or it is in the best interests of a patient who lacks capacity to make the decision in order to prevent harm.

50. If a patient cannot be informed about the disclosure of their information, for example, in an emergency, you should pass relevant information promptly to those providing care. If and when the patient is capable of understanding, you should tell them how their personal information was disclosed if it was in a way they would not reasonably expect.

Emergencies

51. In the rare event of an emergency, if you cannot obtain consent, you can provide treatment, take action or make a referral that is in the patient's best interests and is needed to save their sight or prevent deterioration in the patient's condition (this applies to children, young people and adults).

52. The exception to this is where a valid and applicable advance decision to refuse a particular treatment or healthcare more generally is in place. In these circumstances, you would need to respect the wishes of the patient which could mean not taking any action. These advance decisions are very unlikely to apply in the optical context, but for more information see the relevant incapacity legislation and its code of practice or ask your professional indemnity insurance provider or a legal adviser.

Notes

Alternative formats

You can get this booklet in Welsh or other alternative formats by emailing: communications@optical.org