

Medical decision making

This information is the same as the September 2015 *Medical decision making* brochure of the Office of the Public Advocate.

Medical consent

Doctors and dentists need a patient's agreement ('consent') before performing medical or dental treatment.

If a patient is incapacitated, consent is not needed where there are reasonable grounds that emergency treatment is necessary to:

- save a patient's life
- prevent serious damage to a patient's health
- prevent a patient suffering significant pain or distress.

If a patient is incapacitated, consent is also not needed to:

- provide first aid
- administer a prescribed drug within prescribed or recommended dosage levels
- undertake a non-intrusive examination such as a visual examination.

Consenting to medical or dental treatment

Patients who are 18 years of age or older can consent if they are able to:

- understand, retain, evaluate and weigh up information about the general nature and effect of the proposed procedure and
- communicate their decision.

When a patient cannot consent

A person may be temporarily or permanently unable to consent to medical or dental treatment.

Under the *Guardianship and Administration Act 1986*, the first person in the order listed

who is available, willing and able to make medical and dental treatment decisions on behalf of the patient is considered the **person responsible** and can provide consent.

Also, if a patient is not able to consent to taking part in medical research, the person responsible can consent on the patient's behalf. Visit the Office of the Public Advocate (OPA) website for more information about consent to medical research.

Where there are two relatives in the same position on the following list, the elder person is the person responsible regardless of gender.

The person responsible

1. A medical agent appointed by the patient under an **enduring power of attorney (medical treatment)**.
2. A person appointed by the Victorian Civil and Administrative Tribunal (VCAT) to make decisions about the proposed treatment.
3. A guardian appointed by VCAT to make decisions about medical/dental treatment.
4. A person appointed by the patient on or after 1 September 2015 as an attorney for personal matters under an **enduring power of attorney**, or a person appointed by the patient before 1 September 2015 as an enduring guardian with health care powers under an **enduring power of guardianship**.
5. A person appointed by the patient, in writing, to make decisions about medical/dental treatment including the proposed treatment.
6. The patient's spouse or domestic partner.

7. The patient's primary carer, including carers in receipt of a Centrelink Carer's payment but excluding paid carers or service providers.
8. The patient's nearest relative over the age of 18 years, in the following order listed:
 - a. child
 - b. parent
 - c. sibling (including adopted and half siblings)
 - d. grandparent
 - e. grandchild
 - f. uncle or aunt
 - g. nephew or niece.

Role of the person responsible

The person responsible must make decisions that are in the best interests of the patient. This means considering:

- the wishes of the patient and their family
- the consequence to the patient if the treatment is not carried out
- any alternative treatment available
- the nature and degree of any significant risks associated with the treatment or any alternative treatment
- whether the treatment to be carried out will promote and maintain the health and wellbeing of the patient.

Decisions the person responsible cannot make

If the patient's inability to consent is likely to be temporary, the person responsible can only consent if the treatment is not against the patient's wishes and if failure to treat would result in a significant deterioration of the patient's condition.

The person responsible cannot consent to the following procedures, known as 'special procedures':

- the termination of pregnancy
- removal of tissue for transplantation
- procedures that are reasonably likely to lead to the patient's permanent infertility.

In these cases, an application for consent must be made to VCAT.

The person responsible cannot refuse treatment on the patient's behalf.

The person responsible can call OPA's Advice Service for more information about their role.

Refusing treatment

The requirements for refusing medical treatment depend on whether or not the patient is able to make medical treatment decisions.

A patient, 18 years of age or older, who has the capacity to understand the decision they are making, can refuse medical treatment for a current medical condition by signing a *Refusal of Treatment Certificate: Competent Person* form. This cannot be used to refuse palliative care such as pain relief, and food and water while the patient is still able to eat and drink.

Refusal of treatment if the patient is unable to consent

The *Medical Treatment Act 1988* lists those who can refuse treatment on a patient's behalf.

A person appointed as a medical agent under an enduring power of attorney (medical treatment) or a guardian appointed by VCAT with medical treatment decision making powers can refuse medical treatment for a current condition on behalf of a patient who cannot consent.

To do this, the agent or guardian must sign and have witnessed a *Refusal of Treatment Certificate: Agent or Guardian of Incompetent Person* form.

See OPA's website or call OPA's Advice Service for information about the requirements that must be met before a refusal of treatment certificate can be signed.

Anyone who has a special interest in a patient's welfare can ask VCAT to consider the actions of a person responsible, medical agent or guardian. Call OPA's Advice Service for more information.

Office of the Public Advocate

OPA Advice Service: 1300 309 337

TTY: 1300 305 612

National Relay Service: 133 677

www.publicadvocate.vic.gov.au