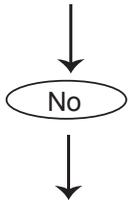


# Can your adult patient CONSENT?

Is there an **EMERGENCY**?



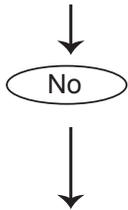
## EMERGENCY TREATMENT

Emergency treatment is urgent treatment required to save the life of a person; prevent serious damage to the person's health; or to prevent the person suffering or continuing to suffer significant pain or distress. A practitioner does not require consent to proceed with emergency treatment (for a person who lacks capacity). If there is a Refusal of Treatment Certificate, treatment must not proceed.

**PROCEED WITH TREATMENT**

Yes

Does the person have **CAPACITY** to make a decision?



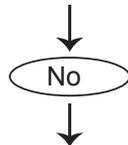
## CAPACITY

The patient is able to understand their medical condition, treatment options, and any risks and benefits associated with the treatment alternatives to enable them to make an informed decision. Sometimes a qualified person may be required to make a capacity assessment (e.g. neuropsychologist, psychiatrist, geriatrician). Capacity may be impaired by, for example mental illness, dementia, an acquired brain injury or an intellectual disability.

**PATIENT CAN REFUSE OR CONSENT TO TREATMENT**

Yes

Is there a **REFUSAL OF MEDICAL TREATMENT** certificate?



## REFUSAL OF MEDICAL TREATMENT

Treatment must not proceed if a person has completed a valid Refusal of Medical Treatment certificate in accordance with the *Medical Treatment Act 1988*.

**DO NOT PROCEED WITH TREATMENT**

Yes

Is there a **PERSON RESPONSIBLE** to consent?

## PERSON RESPONSIBLE

Where a patient is unable to consent to treatment, the practitioner can obtain consent from the person responsible in the following order:

1. A medical agent appointed by the patient under an enduring power of attorney (medical treatment)
2. A person appointed by 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. (Where two relatives are in the same position, the elder will be the person responsible.)

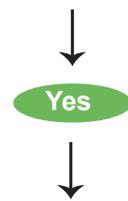
Yes



## NO PERSON RESPONSIBLE (42K NOTICE)

Practitioner is unable to identify or contact a *person responsible* and believes the treatment is in the best interests of the patient. Practitioner must complete a section 42K notice (see our website) and fax to the Office of the Public Advocate (OPA) Advice Service prior to undertaking the treatment.

Do they **CONSENT** to the treatment?



**PROCEED WITH TREATMENT**



Submit a **SECTION 42M** form to the *Person Responsible* and the Office of the Public Advocate

## PERSON RESPONSIBLE REFUSES CONSENT (42M FORM)

Practitioner believes treatment is in the best interests of the patient but the *person responsible* does not consent. Practitioner must complete a section 42M form - *Statement of intent of registered practitioner to provide medical or dental treatment* (see our website) - and submit copy to the person responsible and OPA. The person responsible has 7 days to make an application to VCAT regarding the treatment. The practitioner may seek advice from OPA where they have concerns about delaying treatment.



Office of the Public Advocate

For more information on medical consent, refusal of medical treatment, and powers of attorney see our website: [www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au) or contact our Advice Service on 1300 309 337  
Fax 1300 787 510