

Person responsible

This fact sheet explains who is a 'person responsible' and their role in providing consent to medical or dental treatment for patients who are incapable of consenting to their own treatment.

Consent to medical or dental treatment

Medical and dental practitioners have a legal and professional responsibility to get consent to treatments before treating a patient.

The patient usually gives consent. If the patient is not capable of consenting to their own treatment, the practitioner should seek consent from the patient's 'person responsible'. This is required by the *Guardianship Act 1987*.

Who is the person responsible?

A *person responsible* is **not** necessarily the patient's next of kin or carer.

Under section 33A(4) of the *Guardianship Act 1987*, there is a hierarchy of people who can be the person responsible. A person responsible is one of the following people in order of priority.

1. **Guardian** – An appointed guardian (or enduring guardian) who has been given the right to consent to medical and dental treatments, **or**
2. **Spouse or partner** – If there is no guardian, a spouse, de-facto spouse or partner where there is a close continuing relationship, **or**
3. **Carer** – If there is no spouse or partner, an unpaid carer who provides or arranges for domestic support on a regular basis, **or**
4. **Relative or friend** – If there is no carer, a friend or relative who has a close personal relationship, frequent personal contact and a personal interest in the person's welfare, on an unpaid basis.

The person next in the hierarchy may become the *person responsible* if:

- A *person responsible* declines in writing to exercise the function, **or**
- A medical practitioner or other qualified person certifies in writing that the *person responsible* is not capable of carrying out their functions.

If the treatment is special treatment, the practitioner must seek consent from the NSW Civil and Administrative Tribunal (NCAT) before treating the patient.

If there is no *person responsible* and the treatment is major treatment, the practitioner must seek consent from NCAT before treating the patient. If the practitioner considers the treatment to be urgent and necessary, they may treat without consent.

For more information about urgent, special, major and minor treatment, see the guide overleaf.

Rights and responsibilities of a 'person responsible'

If you are the *person responsible* for someone who cannot consent for themselves you have a right and a responsibility to know and understand: what the proposed treatment is what the risks and alternatives are you can say "yes" or "no" to the proposed treatment you can seek a second opinion.

The practitioner has a responsibility to give you this information and seek your consent to the treatment before treating the patient.

Is there anything a 'person responsible' cannot do?

A person responsible cannot consent to:

- Special medical treatment, such as sterilisation operations, terminations of pregnancy and experimental treatments
- Treatment if the patient objects to the treatment.

Contact NCAT

1300 006 228 | www.ncat.nsw.gov.au

Interpreter Service (TIS) 13 14 50

National Relay Service for TTY users 13 36 77

For more information and assistance visit the NCAT website or contact NCAT's Guardianship Division on (02) 9556 7600 or 1300 006 228.

Summary of consent for medical and dental consent

Type	Treatment	Who can consent?
Urgent treatment	<p>Treatment considered urgent and necessary to:</p> <ul style="list-style-type: none"> • Save a patient's life • Prevent serious damage to health • Prevent or alleviate significant pain or distress (not including special treatment) 	No consent needed
Major treatment	<ul style="list-style-type: none"> • Any treatment involving general anaesthetic or sedation (except as listed in minor below) • Medications affecting the central nervous system (except as listed in minor) • Drugs of addiction (except as listed in minor) • Long-acting injectable hormonal substances for contraception or menstrual regulation • Any treatment for the purpose of eliminating menstruation • Testing for HIV • Any treatment involving substantial risk to the patient • Any dental treatment resulting in the removal of all teeth or which significantly impairs chewing 	<p>Person responsible can consent.</p> <p>Request and consent must be in writing or, if not practicable, later confirmed in writing.</p> <p>If there is no person responsible or the person responsible cannot be located, or will not or is unable to respond, only NCAT can consent.</p>
Minor treatment	<ul style="list-style-type: none"> • All treatments (except those listed in major or special) • Treatment involving general aesthetic or sedation: <ul style="list-style-type: none"> - for management of fractured or dislocated limbs - for endoscopes inserted through an orifice, not penetrating the skin or mucous membrane. • Medications affecting the central nervous system used: <ul style="list-style-type: none"> - for analgesic, antipyretic, antiparkinsonian, antihistaminic, antiemetic, antinauseant or anticonvulsant purposes - only once - for PRN (as required) not more than 3 times per month - for sedation in minor procedures (unless dental) 	<p>Person responsible can consent</p> <p>If no person responsible or the person responsible cannot, will not or is unable to consent, the doctor or dentist may treat without consent. However the doctor or dentist must note on patient's record that the treatment is necessary to promote the patient's health and wellbeing and that the patient is not objecting.</p>
Special treatment	<ul style="list-style-type: none"> • Use of medication affecting the central nervous system where dosage, duration or combination is outside accepted norms • Androgen-reducing medications for behavioural control • Termination of pregnancy • Treatments intended or likely to result in infertility • Vasectomy and tubal occlusion • Aversives: mechanical, chemical or physical • Any new treatment that has not yet gained the support of a substantial number of doctors or dentists specialising in the area 	Only NCAT can consent
Objection to major or minor treatment	If the patient indicates, or has previously indicated, that he or she does not want the treatment carried out.	Only NCAT can consent