

Dear Doctor,

As an insurer, we deal with each insured and the malpractice claim against them on an individual basis. Professional Solutions does not take a position regarding informed consent, informed refusal or other topics which may be addressed in various form documents. If Professional Solutions had such views or guidelines it could prove detrimental to other insureds' and their claims.

As for the various forms themselves, we have always maintained the policy that we do not review any individual forms nor will we endorse any particular form. We do offer the following guidelines as you consider forms, either those you create yourself or use from other sources.

Most importantly, remember that Informed consent and/or informed refusal are processes, which may or may not be satisfied with a written form. It is an educational process which takes place between the dentist and the patient and/or their legal representative.

It is the doctor's responsibility to make sure the patient is properly informed, understands and consents to the treatment to be provided. It is however also within the doctor's discretion as to how the information is communicated and how the consent or refusal is obtained; both should be documented.

Generally, the legal concept of informed consent arises from the principle that absent extenuating circumstances, a patient has the right to exercise control over his or her body by making an informed decision concerning whether to consent to a particular course of treatment or procedure. For the patient to truly consent it is generally held they should know and completely understand the following:

- Nature of the treatment to be rendered;
- All material risks attendant to that treatment;
- The possibility of an occurrence of the risks;
- Alternative treatment available and the risks attendant to those treatments;
- The consequences of allowing the condition to remain untreated.

Therefore your informed consent should strive for:

- A clear, concise explanation of the purpose and nature of the treatment being recommended along with the risks, benefits, options, alternatives and risk of choosing no treatment
- Disclosure of the patient's necessary involvement
- Acknowledgement and comprehension by the patient and/or their legal representative of pursuing the recommended treatment
- The voluntary choice to proceed with the service

The consent form must be written in easy to understand language which assures the patient's comprehension. Therefore, technical terms and abbreviations should be avoided as well as complex sentences. Type face and spacing of the paragraphs should allow for ease of reading, comprehension and understanding. The general rule is that the language should be common and ordinary and written at a 5<sup>th</sup> grade reading level. The statements should be written in second person, using the pronouns of "you" or "your", thus personalizing and internalizing the actions. The sentences should not be assumptive but rather presumptive. Fee or financial information should not be included in your consent forms.

Included here are various sample forms for illustrative purposes only to assist you with creating your own forms should you choose to do so. You will not be able to use these forms as-is. These are to be used as a template only for you to create your own forms and processes to fit the special needs of your practice and the situation using the guidelines noted above.

We encourage you to refer to other resources, such as dental associations or dental literature to further tailor these forms and processes and to assist with periodic review and updates. We encourage you also to regularly update your patient information and consent as part of this process. Your forms should always be dated and when/if a form is updated or replaced; a copy should be maintained as reference for your practice protocol during the time period utilized.

Even though the principles stated above have been generally well accepted throughout the country, specific state statutes or state case law often further define the necessary elements to establish informed consent.

Because of the possible peculiarities in any given state, we believe you would be best served by contacting an attorney in your state who practices health care related law and ask that person to advise you regarding your particular practice. In this way, you will have the benefit of an attorney who should be current on the informed consent issue in your state. The attorney can advise you whether there are any specific informed consent laws which might impact your practice and whether use of an informed consent form would be prudent.

From our experience when a health care provider gets sued for malpractice, often times an allegation is made there was no informed consent given by the patient. Again, Professional Solutions maintains no position on this issue, but rather, leaves the decision up to the practitioner.

We hope this information is helpful.