

Consent for Teaching;

Learning to care for people who lack capacity

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New Zealand law on Consent for Teaching

Code of Health and Disability Services Consumers' Rights.(The Code)

- Right 9 The Code applies to teaching, involvement in teaching requires informed consent.
- Definition “Teaching includes training providers”
- Right 7(4) applies if the patient lacks capacity. Consent can be given by WG or EPOA, or involvement is OK if in the patient’s best interests.



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Student Code interpretation

- *“In almost all circumstances, students should only undertake an examination, provide treatment or perform a procedure when the patient consented to this.”*
- *“exceptions to this are very limited, e.g., time-critical situations where a patient is unconscious and the student’s involvement is urgently needed to provide or contribute to life-saving treatment”*

Bagg W, Adams J, Anderson L, et al. Medical Students and informed consent: A consensus statement prepared by the Faculties of Medical and Health Science of the Universities of Auckland and Otago, Chief Medical Officers of District Health Boards, New Zealand Medical Students' Association and the Medical Council of New Zealand. The New Zealand Medical Journal. 2015;128(1414):27.



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Health and Disability Commissioner Interpretation

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“Where doctors who are not certified in the procedure, are performing that procedure under the direction and supervision of the doctors who are certified in the procedure, and who are available as a safety net and to impart their knowledge, experience, and instruction along the way, this represents teaching, and consequently Rights 6(1)(d) and Right 9 apply.”

- The guidance that applies to medical students applies to all doctors who are learning a procedure.

Health and Disability Commissioner.
Case
19HDC01260. 2024. Accessed
16/10/24,
<https://www.hdc.org.nz/decisions/search-decisions/2024/19hdc01260/>



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How does a doctor become competent performing Cardio Pulmonary Resuscitation CPR

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1. Simulation is really important. All students and doctors practice on mannequins.
2. You cannot simulate the real thing

Immediately following the event, I felt as though I was in shock, my hands were shaking, I felt as though I was on the verge of tears, and my mind raced at a million miles an hour. I quickly turned to self-blame, with one thought dominating my mind, “Was it my CPR that meant we failed the resus?”.

Student reflection on first CPR on An 89 year old man with severe cardiovascular disease



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Performing CPR...consent?

About two minutes after I entered the resus bay, the consultant in charge called me over and quietly said, “this would be a great time for you to practice chest compressions.” ...With my shaking hands and overwhelmed mind, I quickly put my gloves on and prepared myself to take over chest compressions. As I began, I became aware of the patient’s wife sitting directly in front of me, crying and calling out for the priest.



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Not just CPR

- Caring for people who lack capacity(temporarily or permanently) is a large part of the practice of medicine.
- Many more have impaired capacity because they are sick, distressed or in pain and a discussion about consent for teaching is inappropriate.
- Narrow interpretation of “Best Interests” would be that it is rarely in the patient’s best interests to receive care from a learner than from a fully trained practitioner.



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Not just CPR

- Giving of bad news
- Caring for children
- Learning surgical skills
- Learning skills in Intensive Care Unit
- Caring for people with dementia
- Fully qualified doctors learning new skills



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Consent is required for every interaction if possible

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- Involvement of any provider of care with a conscious patient requires consent, whether undergrad student, post grad student or fully trained clinician.



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If not Informed Consent for teaching then what?

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Issues to consider:

1. Definition of teaching and learning
2. Apprenticeship learning
3. International variation in policy
4. Risks and benefits of involvement in teaching
5. Social contract responsibility of all doctors to teach and all patients to be involved in teaching/learning.



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1. Definition Teaching and Learning

- Teaching on patients occurs where the patient, a doctor teacher and a student or students are present, the interaction is for the purpose of teaching, and there is no clinical benefit for the patient.
- This requires consent.
- Distinction between teaching and learning
- Teaching/ learning whilst providing care, impossible to separate out?



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2. Apprenticeship Learning

- Care is provided by teams; varying level of training varying professions
- Combining service with learning
- Patient safety dependent on the quality of supervision, which is being undermined.

- Wang, L. W. (2025). "Addressing the 'python' crisis affecting medical specialist training programmes: organisational frameworks and interdisciplinary insights." *Internal Medicine Journal* 55(10): 1616–1625.



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3. International Variation on Consent for Teaching

| Country | Consent for Teaching | Definition Teaching | Supervision Emphasis? | Provider choice | Patient rights vs Teaching benefit |
|-----------|-------------------------------------|-------------------------|-----------------------|----------------------------|---|
| NZ | Broad; all students and doctors | Very broad | Little | Yes can express preference | More patient rights little on benefit of teaching |
| Australia | Students only | Involvement of students | Yes | No | |
| UK | Consent for teaching | No definition | Yes | No | |
| US | Teaching a benefit, right to refuse | No definition | Yes prominent | No | More benefit teaching less on patient rights |
| Ireland | Teaching a benefit, right to refuse | No definition | Yes Prominent | No | More benefit teaching less on patient rights |
| Singapore | Minimal | Nil | Some | No | Little rights nil teaching benefit |
| Malaysia | Nil | Nil | Nil | No | Nil |

4. Risks and Benefits of involvement in teaching

Much to the benefit of patients and medical education, medical students are participating in patient care from the start of their medical education.

Initially, students may be mere observers, but soon they assume more responsibilities, such as monitoring the condition of patients and even becoming involved directly in treatment.

Patients and the public benefit from the integrated care that is provided by health care teams that include medical students and other trainees.

Students' limited experience is counter-balanced by the supervisory structure of medical teams and patient care generally is enhanced by the involvement of medical students.

American Medical Association Code of Medical Ethics

Medical Student Involvement in Patient Care. 2024.



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5. Social contract responsibility of all doctors to teach and all patients to be involved in teaching/learning.

- Is it OK for doctors to opt out of teaching altogether?
- 70% of elective surgery is performed in the private sector where there are very few trainees.
- We have trouble finding enough GP placements because it is “opt in”
- Is it OK for patients to opt out of teaching altogether
- Surgeons trained on acutely ill people and those who cannot afford private care.



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The way forward

- Define teaching in HDC code narrowly, excluding apprenticeship learning
- Explicitly promote the benefits of involvement in teaching
- Include a requirement to report teaching in all Post Grad registration requirements.
- Increase emphasis on training and oversight of supervision
- Develop a standard addressing apprenticeship learning on vulnerable patients modelled on NEAC *Balancing access to research with avoiding exploitation*



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Balancing access to teaching with avoiding exploitation

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- Patients should not be excluded from teaching because they are vulnerable.
- Doctors should develop skills on the least vulnerable patients requiring that skill.
- Doctors must balance teaching and learning on vulnerable patients with unnecessary risk and exploitation.
- Doctors should provide assistance to patients with impaired capacity to understand the benefits of being involved in training and the role, level of training and place in the clinical team of the doctor.
- Doctors must balance the rights of vulnerable patients and any benefit of being involved in teaching/learning against any increased risk of harm.



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Discussion



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