



NEW ZEALAND  
**CHIROPRACTIC BOARD**  
TE POARI KAIKOROHITI O AOTEAROA

## GUIDELINES:

Informed Consent

July 2023

## Associated Documents

- Competency-based standards
- Code of Ethics
- Health and Disability Commissioner's [Code of Rights](#)

## Revision Schedule

Version	Date Approved	Next Review
One	July 2023	

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## PREAMBLE

Te Poari Kaikorohiti o Aotearoa, the Chiropractic Board (the Board) is pleased to present this guideline to assist Chiropractors with their informed consent practice.

The Board often receives requests from chiropractors for guidance around clinical records, furthermore, most complaints received by the Board relate to the communications between Chiropractors and their patients, failure to obtain valid informed consent or poor clinical records.

Any informed consent process Chiropractors have in place, should be developed in consultation with Board's standards, including the Competency-Based Standards for Chiropractors and the Code of Ethics. The Board also highlights the importance of the Code of Health and Disability Services Consumers' Rights (Code of Rights). The Code of Rights is an important source of the law on informed consent for health and disability services in New Zealand.

Not every eventuality can be envisaged, so developing an understanding of key concepts and how they may be applied in practice will help chiropractic practitioners manage issues of consent.

Aligned with the Code of Rights, this guideline reflects the legal right of the patient to make their own informed decisions about chiropractic treatment and their right to grant, withhold or withdraw consent before or during examination or treatment. In the same way, this statement also reflects the legal duty of the practitioner to obtain the patient's informed consent to treatment at all relevant times.

# GUIDELINES: INFORMED CONSENT

## 1. INTRODUCTION

Honest and clear communication providing all information that may influence treatment or advice is vital in the patient/Chiropractor relationship. Patients have a right to the information that a reasonable patient, in that patient's circumstances, would expect to receive and needs to make an informed choice and to give informed consent. This includes an explanation of their condition, all the relevant risks, benefits, and alternatives in and to chiropractic treatment, the expected costs of treatment, and the other matters set out in right 6(1) of the Code of Rights, and to decide for themselves whether to receive chiropractic care.

Informed consent is the process of exchanging information so that a patient / consumer can make an informed decision about their healthcare options, including the option of refusing the treatment, procedure, or intervention.

### Why is it necessary?

Every competent person has the right to agree or refuse (or withdraw consent) to have a proposed treatment, procedure, or intervention. Providing an intervention or treatment without consent may be unlawful and/or a breach of professional obligations.

To give informed consent a patient must be accurately and adequately informed about their condition, the proposed treatment, procedure, or intervention, and be provided with information in a language, style and form that can be easily understood.

Patients also have a right to an environment that enables both the patient and chiropractor to communicate openly, **honestly**, and effectively. This includes a right to physical privacy and to have another person or persons present to provide support during discussions.

The informed consent process is a vital part of building trust within the Chiropractor/patient relationship. As each new adjustive/treatment process is introduced to the patient, informed consent must be obtained and reinforced as care progresses.

### When is consent required?

Informed consent must be obtained for each proposed treatment, procedure, or intervention. In situations where the agreed treatment plan involves a series of procedures or interventions, consent for the plan of treatment must be obtained prior to the treatment starting but it is usually not necessary to obtain new consent at each treatment visit.

Updated or new consent should be obtained if:

- a. the treatment plan is varied from that originally consented to,
- b. there is a change in the costs of the treatment,
- c. or where there is any change in the patient's condition or risk profile.

Should the agreed plan change, the proposed change, the reason for the change, any change to the cost of the treatment and any other information the patient would expect to receive to make an informed decision whether to proceed with the proposed change should be discussed with the patient and new or updated consent obtained.

Informed consent is an ongoing process and is not to be equated with merely obtaining a patient's written consent in the first consultation. If there has been a significant gap between treatments (for instance several months) the chiropractor should reconfirm with the patient that their risk profile has not changed in that time, any changes to the treatment or cost of the treatment and that they still want to proceed.

The patient's autonomy and right to receive information needed to make informed decisions is the key principle of informed consent and is an ongoing obligation on health practitioners.

**Note:** There are very few and rare situations, where individuals may be treated without consent. These situations include emergencies, where the patient has lost consciousness, collapsed, or is otherwise unable to comprehend the information required to make a decision. In such cases, appropriate treatment, care or assistance to preserve life or restore health may proceed without consent or for specific treatment under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Practitioners must give a balanced and reasoned explanation for the treatment proposed. The information must be 'pitched' at a level that enables the patient to understand the information provided. Care must be taken by the Chiropractor to undertake some level of checking that the patient understands the explanation/s about the proposed treatment/s.

Valid informed consent consists of three key components. The patient must be:

- ✓ competent to consent,
- ✓ appropriately informed, and
- ✓ able to give voluntary consent.

#### New Zealand law:

- [Code of Health and Disability Services Consumers' Rights \(1996\)](#):
  - The right to make an informed choice and give informed consent is a fundamental right in the Code of Rights and includes: every patient has the right to make an informed choice and to give informed consent, except in certain circumstances (right 4 & 5).
  - Every consumer has the right to the information that a reasonable consumer, in that consumer's circumstances, would expect to receive (right 6)
  - Services may be provided to a consumer only if that consumer makes an informed choice and gives informed consent, except where any enactment, or the common law, or any other provision of this Code provides otherwise (right 7)
- [The Care of Children Act 2004](#) (Section 36) states that children over the age of 16 years can give consent as if they are adults.

## 2. OBTAINING INFORMED CONSENT

All information gained through examination and treatment belongs to the patient and must be made available to the patient. Sharing this information is a vital part of the informed consent process. In turn, the patient should have an opportunity to ask questions to elicit a better understanding of the treatment or procedure, so the patient can make an informed decision about whether to proceed or to refuse a particular course of chiropractic intervention.

The information provided to the patient requires both an objective assessment by the Chiropractor of the inherent risks of the proposed treatment, as well as a subjective assessment of what the

patient is likely to regard as important information. The information should be presented in plain language and can be supported by resources containing diagrams and simple explanations about conditions and treatment options.

Careful consideration needs to be given to the way information is communicated in relation to potentially sensitive procedures or treatment. If working with patients from a culturally or linguistically diverse background, special care is needed to ensure there is a shared understanding between the chiropractor and the patient about the information provided. The chiropractor may have to access translation services for patients for whom English is a second language. Duration of informed consent

Gaining a patient's consent to treatment is not a 'one-off' activity when the patient first visits the chiropractor's practice. It should be repeated when a patient returns after a period of absence and when their condition or proposed treatment plan changes.

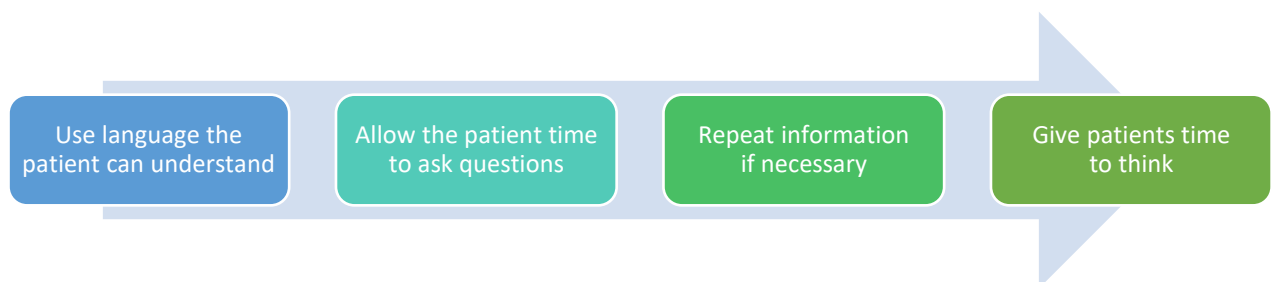
The process of informed consent should occur as close as possible prior to the patient receiving the proposed treatment or management. Informed consent remains valid until it is withdrawn by the patient.

### Power imbalance

There is an inherent power imbalance in the Chiropractor-patient relationship. The patient is vulnerable, whether seeking assistance, guidance, or treatment. This can cause problems in different ways: in breaches of trust, non-therapeutic motives or incentives intended to benefit the chiropractor, and the development of inappropriate personal relationships. A personal relationship with a patient can affect objectivity and may impact on the informed consent process.

## 3. CLEAR COMMUNICATIONS

Practical steps in the process of obtaining consent and to determine any specific concerns of the patient.



The ability to explain risks will be an evolving skill, improving over time, but there are some essential elements to a good explanation. These are the things that the patient will want to know:

- a. your diagnosis;
- b. what treatment you recommend;
- c. why you recommend that examination/treatment/procedure – benefits and evidence;
- d. what is involved in the examination/treatment/procedure;
- e. the usual risks;
- f. any serious risks of debility or disability that are unlikely, but significant;
- g. that you have tested for contraindications; and
- h. alternative chiropractic treatment (if known).

As a chiropractor, imagining yourself as a patient could help with this process. The extra element of explanation need not take very long or be onerous.

#### 4. DOCUMENTING THE PATIENT'S INFORMED CONSENT

While it is not necessary to ask the patient to sign a consent form for the proposed treatment, it is important that the chiropractor documents in the patient's notes the fact that informed consent has been obtained, together with a summary of the information that was provided to the patient to obtain that consent.

Failure to document consent can lead to disputes about what was discussed. For example:

A chiropractor worked with soft tissues, articulations, and gave thoracic spinal adjustments to a patient complaining of acute mid-back pain from a recent sporting injury. The patient later complained of increased sharp pain in their rib cage exacerbated on inhalation and with movement. A thoracic and chest X-ray confirmed a rib fracture. The patient claimed the chiropractor was negligent in their treatment approach, and had they been informed of the potential risks, specifically the risk of rib fracture or the possibility of their condition worsening, they would not have consented to treatment.

Although the chiropractor stated that the risks of treatment were discussed prior to treatment, and verbal consent was obtained, this consent was not documented. The lack of documentation of informed consent created a dispute about whether the chiropractor adequately informed the patient about the potential risks, including the possibility of rib fracture, and whether the patient provided informed consent to the treatment.

There is currently no legal requirement in New Zealand for a signed consent form. Documenting the patient's consent to treatment is not the same as the patient signing a consent form.

Practitioners should be mindful that consent cases generally centre on whether the consent was 'informed', i.e. whether the patient was given sufficient information to make a decision about their health care. It is important the communication process itself be documented, however this does not necessarily involve the patient signing a consent form.

Forms that attempt to satisfy all legal requirements (stating for example that 'all material risks have been explained to me') may not preclude a patient from asserting that the actual disclosure did not include risks that the patient unfortunately discovered after treatment.

Good documentation can serve as evidence (when the advice and treatment is scrutinised at a later stage) that the practitioner did engage the patient in an appropriate discussion and obtain informed consent to treatment.

Obtaining a signature does not necessarily mean that the consent process has been satisfied. Accordingly, the chiropractor's notes can be as effective as a consent form. The fact the chiropractor has taken the trouble to write out their advice may better indicate they undertook a consent process.

Requiring the patient to sign a consent form given by the chiropractor or receptionist as part of the administration process prior to the chiropractic consultation is not valid evidence of informed consent. It can demonstrate a misunderstanding of the chiropractor's ethical and legal duty to the



patient in obtaining the patient's consent to treatment, after an appropriate explanation has occurred and before the treatment commences.

## 5. CAPABILITY OF PROVIDING CONSENT TO TREATMENT

Some signs the patient may not be competent to provide informed consent:

Patients may be presumed competent to make an informed choice or give informed consent unless there are reasonable grounds for believing the patient is not competent. The patient's age can be a relevant factor to consider when determining competence. Several other factors to be considered, and include:

- ✓ the patient's level of understanding, including language and maturity
- ✓ the seriousness of the assessment and/or treatment
- ✓ whether the individual, regardless of their age, has the capacity to consent to the proposed treatment
- ✓ where a patient has diminished competence, that patient retains the right to make informed choices and give informed consent to the extent of their ability.

In any communication regarding Informed Consent, the Chiropractor should try to assess a patient's ability to comprehend. If there is any doubt a second opinion should be sought.

In situations where patients have no capacity to consent and are dependent on a third party for their ongoing care, (for example, persons with an intellectual disability, under a guardianship order or a minor), it is important to ensure all appropriate information is provided to the legal guardian for the patient, who may consent to proposed treatment on behalf of the patient.

## 6. INFORMED CONSENT PRINCIPLES

The following is not an exhaustive list, but a framework of critical principles which can be added to:

- a. The patient is entitled to make their own decisions about their treatment and management.
- b. The patient should be given adequate information on which to base their decisions.
- c. Consent is only valid if the patient is competent to understand and authorise the intervention and makes a voluntary decision to undergo the treatment.
- d. The practitioner should provide adequate information on the issue and intervention options on which to decide.
- e. The information should be provided in a manner which is appropriate in the circumstances, including the chiropractor's objective assessment of the patient's ability to understand, as well as subjective factors such as personality, expectations, fears, beliefs, values, and cultural background of the patient.
- f. Consent obtained by coercion or undue influence is not valid.
- g. The patient is free to accept or reject the practitioner's advice.
- h. The patient can change their decision about interventions / treatment after the commencement of that treatment.
- i. A patient's seeming acceptance of interventions/treatment is not necessarily an indication of consent.
- j. It is a vital and necessary part of the clinical encounter to obtain informed consent and this is an ongoing, rather than a one-off, responsibility.

## 7. FURTHER READING

- Health and Disability Commissioners - The Code of Rights <http://www.hdc.org.nz>
- [HDC Fact sheet 1 Informed Consent for consumers who are not competent](#)
- Medical Council of New Zealand: [Informed consent](#)