



## CONSENT IN ANAESTHESIA

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**ABSTRACT** Legally, two or more persons are said to consent when they agree upon the same thing in the same sense. It is patient's legal and moral right, to be informed about the risks, benefits, and alternatives to proposed treatments. Consent is required for closer adherence to legal requirements and to reduce the risk of litigation. Getting a mere signature on a form is no consent. Document it. If you haven't documented it, you didn't do it and it constitutes medical malpractice. Taking proper consent is potential time and money savings related to reduced litigation and provides better patient safety and satisfaction.

**KEYWORDS :** Doctor patient relationship, informed consent, medical malpractice.

### INTRODUCTION:

In modern day medical practice increasing importance is being given to autonomy and self-determination in medical decision-making.<sup>2</sup> Consent is required for closer adherence to legal requirements and to reduce the risk of litigation. It provides greater patient safety and satisfaction. Consent is of two types Implied and Express. An implied consent is a consent which is not written therefore, its existence is not expressly asserted, but nonetheless, it is legally effective. An express consent is the one, which is stated in distinct and explicit language: Oral or Written. The process of communication between a patient and physician that results in the patient's authorization of agreement to undergo a specific medical intervention is called informed consent. Informed written consent is the need of the hour as its absence could render any physician liable for negligence and constitutes medical malpractice. Patients have the right to be involved in decisions about their care so it is the duty of treating physician to get consent.

### Principles Of A Valid Consent:

1. Consent must be taken before commencing a treatment/procedure. Consent remains valid for an indefinite period, provided there is no change in patient condition or proposed intervention.<sup>3</sup>
2. Consent must be taken from the patient himself, no one can consent on behalf of competent adult.
3. The patient should have the capacity and competence to consent. A person is competent to contract<sup>4</sup> if (i) he has attained the age of majority,<sup>5</sup> (ii) is of sound mind<sup>6</sup> (iii) is not disqualified from contracting by any law to which he is subject. The legal age for giving a valid consent in India is 18 years.<sup>7</sup> A child >12 years can give a valid consent for physical/medical examination (Indian Penal Code, section 89).<sup>8</sup> Prior to performing any procedure on a child <18 years, it is advisable to take consent of a person with parental.
4. Consent should be free and voluntary. Consent should be informed Consent, should be on the basis of adequate information concerning the nature of the treatment procedure.<sup>8</sup>
5. Consent should be procedure specific Consent given only for a diagnostic procedure, cannot be considered as consent for the therapeutic treatment. Consent given for a specific treatment procedure will not be valid for conducting some other procedure.<sup>8</sup>
6. Consent obtained during the course of surgery is not acceptable.
7. Consent for blood transfusion When blood transfusion is anticipated, a specific written consent should be taken,<sup>9</sup> exception being an emergency situation where blood transfusion is needed to save life and consent cannot be attempted.<sup>10</sup>
8. Blanket consent is not valid<sup>11</sup>
9. Fresh consent must be taken for repeat procedure.
10. Consent signed only by the patient and not by the doctor is not valid.<sup>12</sup>
11. Consent should be properly documented Video-recording of the informed consent process may also be done but with a prior consent for the same. This should be documented. It is commonly done for organ transplant procedures. If consent form is not signed by the patient or is amended without his signed authorization, it

- can be claimed that the procedure was not consented to.<sup>13</sup>
12. Patient is free to withdraw his consent anytime.
13. Consent for illegal procedures is invalid. There can be no valid consent for operations or procedures which are illegal.<sup>9</sup>
14. Surgical consent is not sufficient to cover anesthesia care as surgeons are incapable to discuss the risk associated with anaesthesia.<sup>14</sup>

### Consent Format:

Though there is no standard consent format, it may include the following.<sup>15</sup>

- Date and time.
- Patient related: Name, age and signature of the patient / proxy decision maker.
- Doctor related: Name, registration number and signature of the doctor.
- Witness : name and signature of witness.
- Disease related: Diagnosis along with co-morbidities if any.
- It is preferable in patient's vernacular language.
- Surgical procedure related: Type of surgery, nature of surgery with antecedent risks and benefits, alternative treatment available, adverse consequences of refusing the treatment.
- Anesthesia related: Type of anesthesia (general, regional, local anesthesia, sedation).
- Blood transfusion: requirement and related risks.
- Special risks: Need for postoperative ventilation, intensive care etc.
- Document the fact that the patient and relatives were allowed to ask questions, and their queries were answered to their satisfaction.
- Video recording of the informed consent process may also be done but with a prior consent for the same. This should be documented.

### REFERENCES

1. Kumar A, Mullick P, Prakash S, Bharadwaj A. Consent and the Indian medical practitioner. *Indian Journal of Anaesthesia*. 2015 Nov 1;59(11):695-700.
2. Orr T, Baruah R. Consent in anaesthesia, critical care and pain medicine. Vol. 18, BJA Education. Elsevier Ltd; 2018. p. 135-9.
3. Anderson OA, Wearne JM. Informed consent for elective surgery – what is best practice? *J R Soc Med* 2007;100:97-100.
4. Indian Contract Act, Sec 11; 1872. Available from: <http://www.indianlawcases.com/Act-Indian.Contract.Act.1872-2384>.
5. Indian Majority Act; 1875. Available from: <http://admis.hp.nic.in/himpol/Citizen/LawLib/C0141.htm>.
6. Indian Contract Act, Sec 12; 1872. Available from: <http://www.indianlawcases.com/Act-Indian.Contract.Act.1872-2385>.
7. Rao NG. Ethics of medical practice. In: *Textbook of Forensic Medicine and Toxicology*. 2nd ed. New Delhi: Jaypee Brothers Medical Publishers (P) Ltd.; 2010. p. 23-44.
8. Samira Kohli vs. Dr. Prabha Manchanda and Anr on 16 January, 2008. *Civil Appeal No. 1949 of 2004*. (2008)2 SCC 1; AIR 2008 SC 1385. Available from: <http://www.indiankanoon.org/doc/438423>.
9. Kannan JK, Mathiharan K. Legal and ethical aspects of medical practice. In: Modi A, editor. *Textbook of Medical Jurisprudence and Toxicology*. 24th ed. Nagpur: Lexis Nexis Butterworths Wadhwa; 2012. p. 61-118.
10. Kekre NS. Medical law and the physician. *Indian J Urol* 2008;24:135-6.
11. Satyanarayana Rao KH. Informed consent: An ethical obligation or legal compulsion? *J Cutan Aesthet Surg* 2008;1:33-5.
12. Bastia BK, Kuruvilla A, Saralaya KM. Validity of consent-A review of statutes. *Indian J Med Sci* 2005;59:74-8.
13. Herring J. Consent to treatment. In: *Medical Law and Ethics*. 4th ed. United Kingdom: Oxford University Press; 2012. p. 149-220.

14. Waisel DB. Legal aspects of anesthesia care. In: Miller RD,Eriksson LI, Fleisher LA, Wiener-Kronish JP, Young WL,editors. Miller's Anesthesia. 7th ed. Philadelphia USA:Churchill Livingstone,Elsevier;2010. p.221-33.
15. Singh D. Informed vs. Valid consent: Legislation and responsibilities. Indian J Neurotrauma 2008;5:105-8.