**Australian Dental Association** NSW Branch
educating, advocating, innovating

12 December 2014

Leanne O'Shannessy
Director, Legal & Regulatory Services
Legal & Legislative Services Branch
NSW Ministry of Health
Locked Bag 691
North Sydney 2059

Via email: legalmail@doh.health.nsw.gov.au

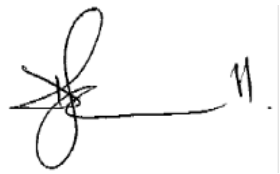
Dear Ms. O'Shannessy

**RE: Revision of the NSW Health Policy Directive "Consent to Medical Treatment – Patient Information"**

ADA NSW welcomes the opportunity to provide comments on the NSW Health draft Consent Manual ("the Consent Manual"). The attached provides our general and specific comments, as requested.

Should you require any clarification or further information on this matter, please feel free to contact our CEO, Ian Burgess, on 02 8436 9900 or ceo@adansw.org.au.

Yours sincerely



**Deb Cockrell**
President

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**NSW Ministry of Health, Legal & Regulatory Services – Comment Template**

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| **DOCUMENT TITLE:** | **Consent Manual** |
| **DOCUMENT NO:** | **V1** |
| **CLOSING DATE:** | **15.12.14** |
| **ENQUIRIES:** | **Blaise Lyons, Principal Legal Officer, telephone: 9391 9612, email: blyon@doh.health.nsw.gov.au**<br>**Louise Sinclair, Senior Legal Officer, telephone 9424 5781, email: lsinc@doh.health.nsw.gov.au** |
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| **COMMENTS PROVIDED BY:** | Australian Dental Association, NSW Branch |
| **General Comments:** | • The Consent Forms (which should be in attachments A-D) are a pivotal part of this policy and should be included for comment. The exclusion of these forms restricts the provision of ADA NSW's endorsement as this aspect of the policy will directly affect ADA NSW members in terms of reporting and administrative requirements. These requirements need to be more clearly detailed.<br>• ADA NSW must have a further opportunity to comment once the mental health issues, that have caused consent forms to be withheld at this stage, have been resolved. The consent forms are the crucial component for ADA NSW members.<br>• Formatting of the policy document as a searchable PDF is encouraged.<br>• The term 'a valid consent' is appropriate terminology that is used by dental practitioners in Australia.<br>• The term 'medical practitioner' is utilised in many circumstances that should be applicable to any health care provider. This latter, and more generic term, should be used throughout the document to encompass all |

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| | registered health care providers (for example, Section 4.5, Page 37, 'When can a medical practitioner refuse to treat a patient?').<br>• The document is heavily medically orientated. There is a mix match of references from medical practitioners, to dentists to healthcare workers. If the intention of the document is to be generic, then the language has to reflect that endeavour and as such there would need to be amendments to the definitions and amendments to the document pursuant to the definitions.<br>• It would appear that written consent is not necessary for most dental procedures. Is this the intention of the document?<br>• Would a patient attending the dental department, sitting in a chair and opening their mouth, imply consent for a dental examination (as per the holding out your arm for a cannula scenario) and if so, could this be used as an example for clarity? |

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**Specific Comments**

| Section/ Page Number | Comment | Suggested Inclusion / Text / Amendments/ Other |
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| Background 1.1<br>P4<br>About this document | Should this section include reference to the patient having the right to refuse certain information before making a decision (as per Section 2.6, Page 21, Part 1)?<br><br>The patient has the right to accept the recommendations of the treating practitioner even though all of the treatment options may not have been presented.<br><br>The statement that, 'Patients must be provided with sufficient information about their condition and treatment options in order to make their own treatment decisions' reflects the law, but is in conflict with later statements in Section 2.6. | See comments - presumably this is to be clarified when the additional consent forms are included with this policy document?<br><br>How is refusal of information to be recorded and signed for by the patient?<br><br>The conditions that determine which edict to follow should be clarified. |
| Background 1.2<br>P6<br>Key Definitions | It appears 'dentists' and 'oral health practitioners' come under 'Health Care Practitioner'. Standalone definitions may be required for inclusion. | See comments - should standalone definitions be included for roles such as dentist, prosthetist, therapist and dental assistant? |

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| Section 2.4<br>P15<br>Does “written” consent need to be obtained? | The terminology on page 15, under the heading ‘Minor Procedures’, appears too ambiguous to be useful for a dental context. Most procedures performed by dental professionals would be considered ‘Minor’ under this definition.<br><br>Earlier on this same page it states, ‘If the consent is provided orally, or is implied (i.e. by the actions of the patient or by the context of the case), the procedure must still be explained to the patient and a written note should be made in the patient’s medical records indicating that they consented to treatment and how they consented’ (Paragraph 5, Page 15).<br><br>The final paragraph on this page then states, ‘It is strongly advisable for a written note to be made in the patient’s file.’<br><br>The 2nd statement is weaker and may cause confusion as to whether a note regarding consent must be recorded, or is simply advisable (DBA guidelines on dental records and Australian Dental Association Inc. Policy Statement 5.17 are in conflict with this). | ADA NSW can provide appropriate definitions for what constitutes urgent, major, minor and special dental treatment circumstances if required.<br><br>Amend 2nd final paragraph on this page to state that “a written note should be made in the patient’s file.” This will provide consistency of language that reflects the definition of terms elsewhere in the policy document. |

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| Section 2.5<br>P17<br>How do I properly inform a patient about a procedure and warn of material risks? | Dentists should be included in this section as inherent risks, such as the fracture of endodontic files, paraesthesia etc., are commonly encountered in dentistry. | Expand terminology beyond Medical to include other Health Care Practitioners, including dentistry. |
| Section 2.5.2<br>P19<br>Patient information forms, brochures or other material about a treatment to inform a patient when obtaining consent | It is questionable whether therapeutic privilege will be upheld in medico-legal considerations. In light of this, ADA NSW would recommend this terminology is not expanded to include dentists. | Expand terminology beyond Medical to include other Health Care Practitioners including dentistry. |
| Section 2.5.3<br>P20<br>Culturally and linguistically diverse (CALD) backgrounds | This section lacks some clarity. Some questions this raises include when is this consent acceptable? In what circumstances can a non-professional interpreter be used? Can the patient decide for themselves if an interpreter is or is not to be used? | Clarify the rights of the patient in determining when an interpreter is required. Clarify when a professional interpreter is required in terms of English proficiency. Are there any assessment tools that can be used to objectively assess this quickly in a clinical setting? |
| Section 2.6 Part 1<br>P21<br>Can information be withheld from the patient? | How is this to be recorded and signed for by the patient? | Specify how the patient's choice to refuse information will need to be documented. |

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| Section 2.7<br>P23<br>Does 'written' consent need to be obtained for every procedure or step in a 'treatment program'? | What are the protocols that should be followed if a change to treatment plan is required, after treatment begins, due to unforeseen circumstances? | Include an indication of the protocols recommended if a change to the treatment plan is required during the treatment process when:<br>a) under no anaesthesia or local anaesthesia<br>b) under sedation or general anaesthesia |
| Section 3 3.1-3.4<br>P25-29 | This should not be limited to the junior medicos, AMOs and delegating. Dentists may also have issues when referring to staff specialists. | See comments |
| Section 3.6<br>P30<br>What is the role of other nurses and other health professionals in providing information for procedures? | There is lack of clarity as to whether oral health practitioners and other support staff meet the definition of 'other health professional'.<br><br>A dental assistant varies from a 'medical' nurse in terms of scope of training and a dental assistant should not come under the definition of a Health Care Practitioner. A dental assistant is not a registered dental practitioner and as such, this terminology may be useful in making this distinction. | Amend Key Definitions to clarify that the term 'Health Care Practitioner' includes 'registered practitioners'. This provides clarity that it is not appropriate for a dental assistant or administrative assistant to gain consent. |

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| Section 3.7<br>(Second Paragraph)<br>P31<br>Must nurses or other health care practitioners obtain consent for the treatment they perform? | Dentists should be specifically noted among other allied health examples (ideally first given the surgical nature of many treatments performed). | See comments |
| Section 4.5.3<br>P37<br>Therapeutic Relationship in disrepair | It is important to clarify that termination of the therapeutic relationship must not leave the patient worse off or with incomplete treatment. This is particularly relevant in dentistry where some treatment, such as root canal treatment or provision of a crown, may occur over several appointments. | See comments |
| Section 5<br>P38<br>Patients who do not have capacity | The comment specifically asking whether this is an area of difficulty in practice; ADA NSW would have thought it rare for a patient lacking capacity to present for general dental treatment alone.<br><br>This is a situation sometimes encountered when dental practitioners attend an aged care facility to provide treatment. | See comments |

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| Section 6<br>P42<br>Minors | Increased clarity is required to define the term ‘serious’ damage to a patient’s health. For instance, in dentistry, a fractured incisor tooth would be considered serious, but may not meet the intended use of this term. | Provide improved clarity and examples on what may define ‘serious’ damage to a patient’s health. |
| Section 7.3<br>P54<br>Anaesthetics | This section is written in the context of general anaesthesia, whereas the use of local/ inhalation/ intravenous and oral sedation are often used in dentistry. It is unclear how the points set out in section 7.4 relate to these different states. | Clarify how the points in 7.3 pertain to local, inhalation, intravenous and oral sedation situations. |

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