

Delegated consent position statement

Nursing and Midwifery Office, Queensland

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Introduction

The Nursing and Midwifery Office, Queensland (NMOQ) is examining models of care to identify opportunities where a clinician's role can be optimised within innovative models of service delivery. This aligns with the strategic directions outlined in the *Blueprint for better healthcare in Queensland* [1] and the *Queensland Commission of Audit Report* [2]. Clarity of a clinician's role and accountabilities enables implementation of efficient models of care. It is within this context that this position statement is presented.

The aim of this position statement is to clearly articulate the role and responsibilities of the registered nurse, in the informed decision-making process. The position statement has been informed by the following documents¹:

- Informed Decision-making in Healthcare Policy QH-POL-346:2011 [3]
- Informed Decision-making in Healthcare Implementation Standard QH-IMP-346 - I:2011 [4]
- *Queensland Health Guide to Informed Decision-making in Healthcare* [5].

Queensland Health comprises the Department of Health and 17 statutory Hospital and Health Services (HHSs).

Definitions

The definitions used in this document reflect the definitions outlined in the guide [5].

Informed decision-making: is the two-way communication process between a patient and one or more health practitioners that is central to patient-centred healthcare. It reflects the ethical principle that a patient has the right to decide what is appropriate for them, taking into account their personal circumstances, beliefs and priorities. This includes the right to accept or to decline the offer of certain healthcare and to change that decision. In order for a patient to exercise this right to decide, they require the information that is relevant to them [5].

Scope of practice: a professional's scope of practice is the full spectrum of roles, functions, responsibilities, activities and decision making capacity that the professional is educated, competent and authorised to perform [6].

Facility: is the individual hospital and/or HHS.

Proceduralist: is a registered health practitioner (including medical practitioners, registered nurses, midwives, allied health professionals) who performs diagnostic or therapeutic procedures.

Delegated consent: – in the context of this position statement, delegated consent means the delegation from a proceduralist to another registered health practitioner (for

¹ Devolvement of responsibility for health service provision to the Hospital and Health Services following the introduction of the *Hospital and Health Boards Act 2011* means that statewide policies, implementation standards and guidelines are no longer mandatory. Accordingly, the Patient Safety Unit has rescinded the policy and implementation standard for informed consent, but has retained the *Guide to Informed Decision-making in Healthcare* (www.health.qld.gov.au/consent/)

the purposes of this position statement, a registered nurse), and acceptance of that delegation, of the provision of sufficient information to a patient with relevant capacity, to enable that patient to make an informed decision about whether or not to consent to a procedure to be performed by the delegating proceduralist and to document that decision. In certain circumstances, delegated consent may not be appropriate (refer to Appendix for examples).

Delegate health practitioner: is a health practitioner to whom the proceduralist has delegated responsibility for the informed decision-making process.

Valid informed consent: reflects that a patient has information relevant to them to make an informed decision and given permission for the healthcare to be provided.

This means that the patient:

- Has capacity to make a decision about the specific issue at the specific time and is not affected by therapeutic or other drugs or alcohol
- The consent is voluntarily given and free from manipulation or undue influence
- The discussion between the patient and the health practitioner is transparent, well balanced and involves two-way communication which is sensitive to the situation. The health practitioner should provide information that:
 - a reasonable person in the patient's position would require to enable them to make a reasonably informed decision about whether to undergo the treatment
 - information that the health practitioner knows or ought reasonably to know the patient wants to be given before making the decision about whether to undergo the treatment
- Is able to clearly understand the information
- Is advised in simple terms of the information set out at Section 1.2 of the guide [5]
- has sufficient time to consider and clarify any information in order to make an informed decision
- The information provided, and the consent given, relate to the specific healthcare actually provided.

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NMOQ supports the Queensland Health policy, implementation standard and guide. NMOQ is seeking to provide professional guidance on the implementation of this framework as it applies to registered nurses.

- Patients must be able to make informed decisions about their healthcare, regardless of who is providing the patient with the relevant information about that healthcare.
- Registered nurses must adhere to the requirements of informed decision making as outlined in the policy, implementation standard and guide.

Review of the provisions in the policy, implementation standard and guide allow for delegation of the responsibility for informed decision-making to health practitioners, including registered nurses, who do not intend to perform the procedure for that particular patient. This is made clear by the implementation standard's definition of 'health practitioners' set out in footnote 1 of the implementation standard and the policy's guiding principle of multidisciplinary practice.

The proceduralist remains ultimately responsible where they have delegated consent to the delegate health practitioner, for the following:

- their decision to delegate the task and the overall supervision of the delegate health practitioner
- taking reasonable steps to ensure the delegate health practitioner obtaining consent:
 - is skilled to undertake the task
 - fully understands the healthcare to be provided and is sufficiently knowledgeable about the healthcare to communicate with the patient
 - discloses relevant information in accordance with the requirements for informed decision-making
 - obtains valid informed consent and documents it appropriately before the healthcare is provided
- respecting the decision of, and supporting, a delegate health practitioner who indicates they do not have the sufficient knowledge, skills or experience to undertake the task.

Likewise, a delegate health practitioner:

- recognises and works within the limits of their professional competence and defined scope of practice
- carries out the task in order to fulfil their legal and professional responsibilities to obtain valid informed consent
- ensures any consent form is completed and the consent appropriately documented in the patient's clinical record
- documents their name and position legibly on the consent form and in the clinical record
- declines the task or requests support to undertake the Informed decision-making process if any of the following apply:
 - they feel they have insufficient skills, experience or knowledge to undertake the task
 - the task is outside their defined scope of practice
 - they feel they do not fully understand the nature and risks of the healthcare to be provided
- notifies the appropriate senior health practitioner in a timely manner of any decision to decline delegated consent, so that appropriate steps can be taken to obtain valid informed consent.

In summary, although the proceduralist retains overall responsibility, there may be circumstances in which the responsibility for informed decision-making can be delegated to a registered nurse, where the registered nurse is not the proceduralist for that procedure [7].

Recommendations

If the delegated consent model is to be considered, then NMOQ strongly recommends the facility has documented evidence that it has considered and complied with each of the actions below, at a minimum, prior to implementing the Delegated Consent model. This will assist the facility in complying with the duty of care owed to its patients to ensure that valid informed consent is obtained prior to a patient undergoing a procedure and will minimise any risks involved with the delegated consent model.

Please note: in certain circumstances, delegated consent may not be appropriate (refer to Appendix for examples).

Entity	Action
Facility	<p>The following elements of governance must be achieved by the facility at a minimum:</p> <ul style="list-style-type: none"> • The consent forms used by the facility to be amended to reflect delegated consent. • A signature block to be included on the consent form for the proceduralist to verify valid informed consent has been provided, including: <ul style="list-style-type: none"> – the patient has the capacity to provide consent – the consent is given freely and voluntarily – the patient has received information relevant to them to make an informed decision – the patient's consent has been appropriately documented. • The delegated consent process aligns with Standard 1 of the <i>National Safety and Quality Health Service Standards</i> as developed by the Australian Commission for Safety and Quality in Health Care. To achieve this there needs to be clear documentation and evidence that: <ul style="list-style-type: none"> – each registered nurse undertaking the delegated consent process has a completed, signed and up-to-date 'consent training and delegation record' (CTD record), a copy of which should be kept in the staff member's personnel file and a copy kept by the staff member. The CTD record should set out the patient group and area of practice for which the registered nurse has been approved as competent to engage in delegated consent, along with any training undertaken and who has authorised the delegation. It should be signed off by the proceduralist, executive director of medical services (or equivalent) and the director of nursing services (or equivalent) – regular audits have taken place of the delegated consent process, assessment, viewing of procedures, the training undertaken and its currency, the validity of the authority and the consent training and delegation record (this could be incorporated into annual performance appraisal) – consideration has been given to using current patient satisfaction survey tools to incorporate patient perceptions of their experience of delegated consent-taking. <p>Training</p> <p>A training tool should be developed by the facility to assist registered nurses training needs with respect to delegated consent. The following elements can be used as a guide:</p> <ul style="list-style-type: none"> • the informed decision-making process • the information contained in the guide and the facility's informed decision-making policies, along with any policy specific to delegated consent • the information that ought be provided to patients for the specific procedure, including the rationale for the procedure, the benefits, risks, alternatives, complications and clinical

	<p>outcomes of the procedure</p> <ul style="list-style-type: none"> • an understanding of the delegate health practitioner's level of accountability in participating in the delegated consent process • a non-patient learning environment could be used for role play of taking consent, including patient's rights and responsibilities and for complex patients/ ethical dilemmas, where skills can be refined and later evaluated. Ideally this should be included as part of orientation training. <p>Assessment</p> <p>The responsibility for delegation of the informed decision-making process remains with the proceduralist and the HHS. The following information provides a guide as to assessment criteria that could be used to assess whether or not a registered nurse is competent to undertake delegated consent:</p> <ul style="list-style-type: none"> • Has the registered nurse attended orientation and induction to the unit? • Has the registered nurse attended an informed decision-making professional practice and development program of some nature (e.g. in-service, workshop, orientation etc) • Has the registered nurse completed a self-assessment (with evidence available to be cited on an annual basis), to demonstrate understanding and knowledge of informed decision-making? • Has the registered nurse completed a self-assessment (with evidence available to be cited on an annual basis), that they have demonstrated understanding and knowledge of the procedure to be performed (including witnessing of the procedure)? • Can the registered nurse demonstrate that they perform the procedure as part of their professional practice? (If yes, there should be sufficient evidence that they have knowledge, experience and skills to undertake the delegated consent process for the proceduralist) <p>The facility needs to satisfy itself in either case set out above that the registered nurse is competent to undertake the informed decision-making process, including the ability to discuss the rationale for the procedure, the benefits, risks, alternatives, complications and clinical outcomes of the procedure.</p> <p>Assessment could be included as part of the regular performance appraisal of registered nurses.</p>
Unit/service line	<p>The following elements should be considered by the unit/service line planning to implement delegated consent:</p> <ul style="list-style-type: none"> • All relevant staff will need to be involved in the planning stage. • Consideration should be given to any staffing and resource issues (e.g. supervision by other health practitioners). • The delegated consent requirements should be incorporated into the service profile of the business planning framework

	<p>(Queensland Health tool for nursing workload management) to ensure the appropriate allocation of resources.</p> <p>There has to be clear communication with the treating team with respect to which registered nurse is competent to undertake delegated consent so that undue pressure or expectations are not placed on other registered nurses within the unit to undertake delegated consent.</p>
Proceduralist	<p>The following elements must be achieved by the proceduralist:</p> <ul style="list-style-type: none"> • If the proceduralist would like to adopt delegated consent as part of their practice, it is their responsibility to ensure the delegate health practitioner has the experience, knowledge and skills to perform this activity. • The proceduralist must satisfy himself or herself prior to performing the procedure (in direct discussion with the patient, not just by confirming that the consent form has been signed) that valid informed consent, as defined in this position statement, has been obtained and documented. • The proceduralist should sign in the relevant section of the consent form to indicate that he or she has completed this process. • The senior health practitioner on the treating team has the overall responsibility for ensuring valid informed consent has been provided and documented.
Delegate health practitioner	<p>The following elements must be achieved by the delegate health practitioner:</p> <ul style="list-style-type: none"> • Patients ought to be given the opportunity, if they wish, for the proceduralist to obtain the valid informed consent, not the delegate health practitioner, and this request should be documented in the patient's chart and respected. • The registered nurse should undertake a self-assessment to identify if the informed decision-making process is within the limits of their scope of practice and any relevant legislation. The registered nurse should identify their individual learning or development needs if they do not feel that they are in a position to take responsibility for the delegated consent process. • A registered nurse should refuse the delegation to undertake the informed decision-making process if he or she feels it is outside their scope of practice.

Appendix

Examples of when delegated consent may not be appropriate.

The *Guide to Informed Decision-making in Healthcare* sets out some circumstances where a proceduralist (often a treating medical practitioner) should lead the consent process, including but not limited to:

- where the patient's condition is such that the facility, unit, proceduralist or delegate health practitioner forms the view based on pre-existing patient risk factors, including age, co-morbidities, complexity of the procedure or potential risks of the procedure, that delegated consent would not be appropriate
- where there is a suspicion the patient may not have the capacity to consent—a specific assessment should be undertaken by the proceduralist responsible and may require consultation with a suitably qualified and experienced geriatrician, psychiatrist or neurologist
- a patient's decision to decline or withdraw consent is to be communicated to the proceduralist or treating health practitioner responsible for the patient. A senior medical practitioner should be involved where it is a child (under the age of 18 years) declining to consent to healthcare
- health practitioners (who are not medical practitioners) are not able to make the decision to withhold or withdraw life-sustaining measures in an acute emergency from an adult patient who lacks capacity to consent
- where it is thought that a patient's physical or mental health might be seriously harmed by the provision of certain information, the treating health practitioner must be informed and can review the patient and seek legal advice
- where the patient does not wish to be given information—inform the treating health practitioner so they can discuss the situation with the patient before making a decision whether to proceed
- in complex healthcare or where there are serious consequences of the healthcare, stronger evidence will be required of the child's capacity to consent to the specific healthcare. In these situations, the guide recommends that the assessment regarding capacity be carried out by a medical practitioner
- where parents of children are themselves under 18 years of age
- administration of blood transfusion to a child as a treatment in the absence of consent
- if a woman in the care of a midwife chooses not to accept a care pathway as recommended by the maternity team, midwives are advised to refer to the *Australian College of Midwives National Guidelines for Consultation and Referral: Care outside the Guidelines*
- terminations of pregnancy
- where there is mandatory detention under the *Public Health Act 2005* of persons with a controlled notifiable condition, the medical practitioner is required to give the subject of the order an explanation of the examination or treatment to be undertaken
- any use of restraint would require seeking guidance from a senior health practitioner and/or legal advice
- healthcare that is unlawful, or requires court approval or requires the consent of Queensland Civil and Administrative Tribunal (QCAT) or other appropriate tribunal to be provided to a patient without the capacity to make a decision as set out in Section 2.3.8 of the guide
- accessing unapproved therapeutic goods
- obtaining organs for transplantation.

References

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6. Australian Nursing and Midwifery Council, National Framework for the development of decision-making tools for nursing and midwifery practice. 2007, ANMC.
7. Queensland Government, Civil Liability Act 2003. 2012.

