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V1.1	October 2018	Operational Manager	Clinical Director	

Consent

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Introduction

1.1 Policy statement

The purpose of this document is to advise all staff of the principle of consent and that it is an important part of medical ethics and international human rights law.[1] At Thanet Health Community Interest Company (TH CIC) it is acknowledged that consent to treatment is the principle that a person must give permission before they receive any type of medical treatment, test or examination. This must be done on the basis of an explanation by a clinician. Consent from a patient is needed regardless of the procedure.

1.2 Status

This document and any procedures contained within it are non-contractual and may be modified or withdrawn at any time. For the avoidance of doubt, it does not form part of your contract of employment.

1.3 Training and support

The company will provide guidance and support to help those to whom it applies understand their rights and responsibilities under this policy. Additional support will be provided to managers and supervisors to enable them to deal more effectively with matters arising from this policy.

2 Scope

2.1 Who it applies to

This document applies to all employees of the company and other individuals performing functions in relation to the company, such as agency workers, locums and contractors.

2.2 Why and how it applies to them

This document defines the phraseology associated with consent and provides detailed information for all clinical staff, ensuring they fully understand the need to obtain consent. It is to be read in conjunction with the referenced publications and staff are to adhere to the direction given within this policy.

The company aims to design and implement policies and procedures that meet the diverse needs of our service and workforce, ensuring that none are placed at a disadvantage over others, in accordance with the Equality Act 2010. Consideration has been given to the impact this policy might have in regard to the individual protected characteristics of those to whom it applies.

[1] Consent to Treatment

3 Definition of terms

3.1 Voluntary consent

The decision to consent or not to consent must be made by the individual and must not be influenced by healthcare professionals, friends or family members.

3.2 Informed consent

The patient must be given all of the information regarding what the procedure or treatment involves; this includes the associated benefits and risks, information about alternative treatments and the consequences if the procedure or treatment is declined.

3.3 Capacity

The person must be capable of giving consent, which means they fully understand the information given to them and can use it to make an informed decision.

4 Policy

4.1 General overview

Consent must be voluntary and informed if it is to be deemed valid, whilst the person consenting must have the capacity to do so. Clinicians must respect the decision of an adult who has the capacity to make a voluntary and informed decision, regardless of the consequences. If, however, an adult does not have capacity, clinicians can administer treatment if it is in the best interest of the patient. In such instances, clinicians should seek guidance from the patient's relatives or friends.

Clinicians must be mindful that a patient's capacity to give consent may be temporarily affected by factors such as pain, fatigue, illness or the side effects of medication. In such cases, clinicians must not assume the patient does not have the capacity to consent.

4.2 Giving consent

Consent can be given in two ways:

- Verbally – consenting to an examination or procedure such as an injection
- Written – signing a consent form for minor surgery or other procedures

4.3 Implied consent

This is where a patient does not give either verbal or written consent but the actions of the patient demonstrate consent, such as:

- A patient rolling up a sleeve to have their blood pressure taken
- A patient holding out an arm to have a blood sample taken

- A patient opening their mouth to have their throat examined

Patients can withdraw consent at any time and if this occurs, clinicians must stop the procedure safely, listen to the concerns of the patient and explain the consequences of not finishing the procedure.

4.4 Obtaining consent

It is the responsibility of the clinician carrying out the procedure or examination to obtain consent from the patient. The amount of information the clinician needs to provide varies on a case-by-case basis, but the clinician will in all scenarios:

- Try to ascertain the patient's individual needs and wishes
- Ensure the patient has the capacity to consent
- Explain the requirement for and purpose of the procedure, examination or treatment
- Discuss the options available to the patient including the option not to proceed
- Give an explanation of the benefits and associated risks or side effects
- Discuss the possibility of any issues which may arise during the process
- Answer any questions the patient may ask prior to consenting
- Explain that the clinician conducting the examination, procedure or treatment will obtain the patient's consent
- Remind the patient that they can withdraw consent at any time
- Reassure the patient that the examination, treatment or procedure is for their benefit but the overall choice to proceed rests with them
- Where applicable, a consent form will be completed and signed by the patient (see Annex A)
- Offer the patient the option of a second opinion
- Provide advice regarding the post-examination, treatment or procedure recovery process

This list is not exhaustive and clinicians must ensure that the patient has been given all of the necessary information available in order for them to make a voluntary, informed decision.

4.5 Consent for children and young people

Young people aged 16-17 are presumed to be capable of consenting to medical examinations, treatments or procedures. As per adults, consent will only be deemed valid if it is given voluntarily by an appropriately informed young person.

A child under the age of 16 may be Gillick competent to give consent to medical examinations, treatments or procedures. Gillick competence shows that a child under the age of 16 who 'has sufficient understanding and intelligence to enable them to understand fully what is involved in a proposed intervention will also have the capacity to consent to that intervention'[2].

However, it is deemed good practice to involve the family or carers of the child in the decision-making process, so long as the child is content for this information to be shared.

[2] Reference guide to consent for examination or treatment

Children under 16 may have the capacity to consent to some examinations, treatments and procedures but not others. Therefore, parental consent should be sought and recorded accurately when it is deemed they are not Gillick competent.

4.6 Parental consent

In the case of immunisation, the consent of one adult is usually acceptable (Section 2(7) of the Children Act 1989), but if one adult consents and the other disagrees, the immunisation should not be carried out unless both adults with parental responsibility agree to the immunisation or there is court approval for the immunisation to be administered as it is in the best interests of the child.[2]

The Department of Health (DoH) also states that immunisation is an 'important decision' and immunisations should not be administered if two adults with parental responsibility cannot reach an agreement. In such cases, it is advised that the decision be referred to the courts.[2]

At Thanet Health Community Interest Company, should there be a dispute, the Clinical Lead and Business Manager are to be consulted as to the most appropriate way to resolve the dispute.

4.7 Immunisations

The general principles of consent apply to the administering of immunisations by either a GP or nurse. The process of obtaining consent should be the same whether the consent obtained is written, verbal or implied (e.g. holding out an arm to be vaccinated).

In accordance with the Green Book[3]: 'There is no legal requirement for consent to immunisation to be in writing and a signature on a consent form is not conclusive proof that consent has been given, but serves to record the decision and the discussions that have taken place with the patient or the person giving consent on a child's behalf'.

For a patient requiring a course of vaccinations, consent must be obtained each time they attend to have a vaccination.

4.8 Lack of mental capacity

Patients who do not have the capacity to make an informed, voluntary decision are protected under the Mental Health Act (MHA) 2005. The MHA only applies to those patients living in England and Wales.

A person is defined as lacking capacity if 'they are unable to make a decision for themselves because of an impairment or disturbance in the functioning of their mind or brain'.

Patients lacking capacity have the following rights:

- All decisions will be made in the best interest of the patient
- The liberty of a patient will only be taken in very specific situations; this is referred to as a deprivation of liberty and will only be used if it is the least restrictive way of keeping a patient safe or ensuring the correct medical treatment is provided

[3] Green Book, Chapter 2 - Consent

- To have support from an advocate; this is someone who acts on the patient's behalf but does not have legal authority to make personal or financial decisions on behalf of the patient
- To have a deputy appointed by the court to make personal or financial decisions for the patient
- To receive guidance from the Court of Protection

The MHA 2005 requires that appropriate steps are taken to enable the patient to make the decision for themselves. These include:

- Providing relevant information, including choice regarding alternative treatment/procedures
- Communicating in an appropriate way, i.e. presenting information in a different manner so it is easier for the patient to understand
- Putting the patient at ease, discussing the matter when the patient feels confident to do so, such as in the morning or afternoon
- Seeking additional support so the patient has a friend or relative who is able to help them understand and make a choice

Further supporting guidance is available in the MHA 2005. For detailed information relating to the deprivation of liberty please follow this link.

4.9 Summary

Patients have a moral and legal right to determine what happens to their own bodies. Seeking and obtaining valid consent is a fundamental process in healthcare; it is the patient's agreement for the clinician to provide care. All staff at Thanet Health Community Interest Company are to adhere to this policy, and should doubt arise they are to seek guidance from Dr Ashwani Peshen – Clinical Lead.

Annex A – Consent form

PATIENT CONSENT FORM THANET HEALTH COMMUNITY INTEREST COMPANY			
This form is to be used for treatment, immunisation, examination or minor operation.			
PATIENT DETAILS			
Surname		**Forename**	
Title		**Sex**	
NHS No.		**Date of birth**	
PROCEDURE DETAILS			
The clinician has discussed with the patient the following: • The nature of the procedure, techniques used and aftercare • The associated benefits and risks • Any follow-up procedures, examinations or other pertinent information • The rights of the patient			
Name of clinician		**Title (Dr, nurse, etc.)**	
Date of procedure		**Location**	
Type of procedure			
Clinician's signature and date			
PATIENT CONSENT			
I understand the need for and consent to the procedure detailed above. I confirm that I have been given all of the required information about the procedure, including techniques, aftercare, benefits, risks and the required follow-up process. I also have been advised of my rights as a patient.			
Signature of patient			
Date of signature			