

Withholding consent



David Lauder, dento-legal adviser at the Dental Defence Union (DDU), discusses what you need to know if a patient withholds consent.

Before any investigation or treatment begins, valid consent must be sought from the patient. It is important to ensure that the patient is given enough information about the risks and benefits of all reasonable treatment options, that they understand the risks and benefits during each stage of treatment and that their questions are answered as fully as possible.

Additionally, consent must be voluntary, and the person must have the capacity to understand the information provided and use it to make an informed decision. When obtaining consent, consider the patient's religious, cultural and any other beliefs which might lead them to refuse treatment or specific aspects of treatment.

However, competent adults have the right to withhold their consent to treatment for any reason, or for no reason at all. This is still the case even if their refusal appears unreasonable or not in their own best interests. A refusal to give or withdraw consent does not alter dental professionals' legal and ethical responsibilities towards the patient, or their right to receive reasonable and proper care.

Nevertheless, refusing one aspect of treatment doesn't give the patient the right to alternative treatment that isn't normally available to other patients.

How does withholding consent impact upon a patient's treatment plan?

If a patient's refusal to consent to one element of the treatment plan threatens the outcome of other elements, you must explain the consequences of their decision. The original treatment plan may have to be revised or abandoned if the patient's wishes mean it's no longer appropriate and in their best interest.

'Competent adults have the right to withhold their consent to treatment for any reason, or for no reason at all. This is still the case even if their refusal appears unreasonable or not in their own best interests.'

Be confident that you know which aspects of treatment the patient has and has not agreed to. Make sure to confirm that the patient is happy to proceed with the revised treatment plan.

When can consent be withdrawn?

Consent may be withdrawn at any time, even during treatment. You should immediately comply with any request to stop treatment, unless the patient's capacity to decide is impaired at that time.

You should still take the request into account in assessing the patient's best interests and decide whether to stop treatment.

If stopping treatment would be dangerous to the patient it is ideal to explain this before you reach the point where you cannot stop. This will allow the patient the opportunity to abandon the treatment before you reach the tipping point.

What to do if the patient is a child

A Gillick-competent child or an adult with parental authority may refuse to consent or authorise treatment.

It may be unlawful for a dental

professional to treat a child who isn't considered Gillick-competent against the wishes of a parent or guardian. It's important to consider all significant factors when assessing a child's best interests, including the appropriateness and availability of alternative measures. Indeed, it is wise to get a second opinion if the parents' wishes conflict with reasonable clinical practice and are not in the best interests of a child.

It may be appropriate for a member of the dental team to seek a court order, if for example, failure to treat immediately would result in death or permanent injury. Fortunately, it is very rare for this course of action to be needed for dental treatment. However, an application can be made for a specific issue order to conduct treatment without parental authority in England and Wales under Section 8 (1) of the Children Act 1989, under Section 11 of the Children (Scotland) Act 1995 or an Article 8 order of the Children (Northern Ireland) Order 1995. A court asked to override parental authority will proceed cautiously.

<https://doi.org/10.1038/s41407-023-1775-8>