



Consent and Confidentiality

Nicole McKeever

BDS BSc MFDS MSc PG Dip

Objectives

- By the end of this lecture you should understand the concepts of consent, confidentiality and capacity and be able to apply the learned standards and principles to providing patient care for conscious sedation



Consent SDCEP

- **GDC 3.1.6** You must obtain **written** consent where treatment involves conscious sedation or general anaesthetic (includes premedication)
- Take reasonable steps to ensure that patients are aware of any **material risks** involved in a proposed treatment and of **reasonable alternatives**
- Present options – Pharmacological and non-pharmacological
- **Capacity/Valid**
- >16 years presumed to have capacity
- <16 years can be competent but if not need consent from someone with parental responsibility
- **Consent should be gained at a separate visit**, and **reconfirmed** on the day of treatment unless emergency
- **Written information** (age and learning ability)

Material risk

- What constitutes a material risk varies from patient to patient
- Consent has to be patient specific
- The new test for materiality is 'whether, in the circumstances of the particular case, a reasonable person in the patient's position would be likely to attach significance to the risk, or the doctor is or should reasonably be aware that the particular patient would likely attach significance to it'
- It is not sufficient to ask the patient if they want to know anything else, as patients cannot be expected to know what they do not know about their condition or treatment options

Rights and responsibilities of the patient



Autonomy – the patients right to make informed decisions about their treatment. It ensures that the procedure cannot proceed unless it represents the patient's wishes



Any medical or surgical intervention offered should safeguard the health of the patient.



The benefit of any procedure should substantially outweigh any associated risks



Therefore, the patient should be made aware of risks and benefits of the procedure

Patient's best interests

- In relation to sedation, the patient's best interests must be served by any decision to recommend or withhold the offer of sedation
- Any patient who does not require sedation for a particular procedure should not have it offered or administered

What is it that makes you anxious about treatment?



How do you normally have your treatment?

Consent

- Consent in the medical context is a patient's agreement for a healthcare professional to provide care. Patients may indicate consent non-verbally, verbally or in writing
- For consent to be valid the patient must:
 - Be competent to take the decision
 - Have received sufficient information to make an informed choice
 - Not be acting under duress



Consent

Expressed: The patient verbally agrees or completes and signs a consent form to receive treatment

Implied: The patient accepts treatment by a compliant action such as sitting in the dental chair and opening their mouth for examination

Expressed consent

- GDC states that written consent must be obtained for those patients undergoing conscious sedation or general anaesthetic
- Contain
 - Patient's details
 - Practice details
 - Completed in ink and no abbreviations
 - Signed by both parties involved
 - Patient should receive a copy
- Only a qualified clinician can obtain consent from the patient



Consent form

- A completed consent form provides confirmation that the patient has consented to the proposed treatment(s), and that the consent was formally obtained, with an explanation being offered to the patient
- Gives evidence of what was agreed between the clinician and the patient
- No alterations should be made to the consent form
- If there is a change to the planned procedure, the patient must be consulted and a new consent form completed and signed



Consent for sedation



Ideally should be obtained at a separate appointment to treatment



This allows the patient time to reflect, consent should never be taken under duress



In an emergency e.g. if the patient is in pain the patient can consent to sedation at the time and proceed with treatment on the same visit



Decision to proceed on the same visit should be justified and documented



Patient should be able to meet pre and post sedation instructions in order to proceed with sedation these should be provided with consent form



Can treat under the 'best interest' principle

Consent for sedation

- Consent is an ongoing process and should be regularly checked and updated
- Midazolam produces anterograde amnesia, meaning the patient may not be able to remember any conversations after the induction of the drug
- If the treatment plan changes e.g. failed root canal and tooth now requires extraction, the appointment would have to be abandoned, the patient allowed to recover and be re-appointed for extraction
- Gives the opportunity to discuss their options further and give informed consent
- Important as if the clinician proceeds with extraction, patient could have cause for complaint/ take legal action
- If any treatment undertaken is not documented – clinician may be considered negligent and at fault

Valid consent and sedation

- **Standard 3.1: You must obtain valid consent before starting treatment, explaining all the relevant options and the possible costs**
- Patient must be able to give consent. Must be able to understand and retain the information being provided, consider it and come to a decision themselves
- Must give their consent voluntarily without pressure from anyone else
- Must be provided with adequate information:
- Advised of the proposed treatment they require, and the mode of sedation being provided
- Aware of the advantages and disadvantages of any proposed treatment and sedation being provided
- Made aware of alternative treatments and sedation available
- Made aware of associated risks with the treatment
- Timescale of the appointment, and arrangements required to fulfil pre and post sedation instructions
- Cost of treatment and sedation

Things to look out for to ensure your patient has given informed consent



Many patients come to a sedation appointment expecting to be “**knocked out**” - it is very important that you are transparent that this is not the case and that we are providing **conscious sedation**



Patients also often think they won't need **local anaesthesia** in addition to the sedation



Others also think that the **sedation is the local anaesthesia**



If all the patient wants is for treatment to be **pain free** then they don't need sedation they just need **good local anaesthesia**

**You will still be awake,
you may be drowsy,
you will still be able to
talk to us and you will
be aware of us talking
to you and working in
your mouth**

**The drug has an effect
on your memory so you
may not remember a lot
of what has happened
during the treatment
and will feel like you
were asleep**



**If you have had
sedation before you
may feel as though
you were asleep
because of the
amnesic effect of
the drug, but you
were not asleep**

**You will be aware
of us working in
the mouth, but
the drug will
make you more
accepting of the
treatment**

Competent

- To be deemed competent as an adult you must be able to:
 - Understand the proposed treatment in relation to the risks and benefits
 - Understand the alternative treatments available
 - Understand the consequences of not accepting the proposed treatment
 - Retain the relevant information long enough to make a free decision under no duress

Who can give consent?

- A competent adult (18 +) has the right to make informed decisions about their treatment
- Touching a patient without their consent can constitute battery
- 16-18 year olds: classed as competent, if not, consent is gained from someone who has parental responsibility. Confidentiality must not be breached unless there is concern for their health.
- 16-17 years old: refuses treatment person with parental responsibility can override the refusal if its not in the patient's best interests
- < 16 - legal guardian appointed by the court or parent can consent where a child is deemed not competent. Decisions must be in childs best interest. If not they can be overruled by a court

Who can give consent?

- Adults considered incompetent in other aspects of life may be able to consent to simple treatments, but not complex procedures where detailed information needs to be provided
- This is because they may not be able to understand all of it in order to give valid consent
- Children <16 years: Need to be assessed as to whether they are Gillick competent under the Fraser guidelines – patient has the maturity and capacity understand and retain information and consent for themselves
- If Gillick competent they can consent to treatment without the person who has parental responsibility being informed or giving permission
- If <16 refuses treatment can be overridden by person with parental responsibility if it is in the patient's best interests even if the patient is deemed Gillick competent
- Children may sign for treatment and sedation if they are competent to do so
- Consent may also be given by legal guardians, adoptive parents and the local authorities for children subject to a care order

Who can give consent?

- The natural father cannot give consent if he is not married to the child's mother, unless his name is on the birth certificate, with the birth taking place before 1st December 2003
- For other natural fathers to hold parental responsibility they must either marry the mother of their child or make a parental agreement through a court order
- Friends and relatives cannot give consent to treatment as they do not hold parental responsibility

Capacity



Nobody can consent on behalf of an incompetent adult – except in cases where they have predetermined it by advanced power of attorney



Doctors and dentist must act in their patient's best interests, wherever possible obtaining two independent professional views as to the advisability of any proposed treatment



A record should be made of the assessment of the patient's capacity, why the health professional believes the treatment to be in the patient's best interests, with the involvement of the people close to the patient



Parents may consent on behalf of those between 16-18 when the child is deemed not competent to do so themselves

Assessing capacity

- For the purposes of consent to treatment, capacity is both time-specific and decision-specific
- It refers to the patient's ability to make the specific decision at the particular time at which it is made and for a particular treatment
- The person who assesses capacity is the clinician providing treatment and not a mental health expert
- When assessing a person's capacity to make a decision, the Mental Capacity Act 2005 sets out a two-stage test of capacity, consisting of the following questions:
 1. Does the person have an impairment of the mind or brain, or is there some sort of disturbance affecting the way their mind or brain works? (It does not matter whether the impairment or disturbance is temporary or permanent)
 2. If so, does that impairment or disturbance mean that the person is unable to make the decision in question at the time it needs to be made?



Assessing capacity



In answering the second question of the capacity test, surgeons should consider whether the patient is able to:



Understand information relevant to the decision



Retain the information long enough to make a decision



Use or weigh up that information as part of the decision-making process



Communicate a decision by any means eg sign-language or talking

Assessing capacity

Capacity must be assessed on a case-by-case basis, capacity to make a decision can vary depending on the nature of the decision and can change over time

If the impairment is temporary, consideration should be given as to whether the decision could safely be deferred until the patient has regained capacity

If your assessment leaves you in doubt as to whether your patient has capacity to give consent you should seek advice from colleagues, those close to the patient, those involved in caring for the patient or others who may be aware of the patient's usual or current ability to make decisions

If this does not remove doubt then you should seek advice from colleagues with relevant specialist experience, such as psychiatrists (in the case of a concern about possible mental health issues)

If you are still unsure as to the patient's capacity, you must seek legal advice with a view to asking a court to determine the capacity of the patient.



Capacity Laws

- Mental Capacity Act 2005 (England and Wales)
- Deprivation of Liberty Safeguards (Scotland: Adults with Incapacity (Scotland) Act 2000 and adults with incapacity amendment regulations 2012)
- Mental Capacity Act 2016 (Northern Ireland)



Mental Capacity Act 2005

- THE FIVE STATUTORY PRINCIPLES on which the legal requirements are based are:
 1. A person must be assumed to have capacity unless it is established that they lack capacity
 2. A person is not to be treated as unable to consent on a case-by-case unless all practicable steps to help him to do so have been taken without success
 3. A person is not to be treated as unable to make a decision merely because he makes an unwise decision
 4. An act done or decision made for or on behalf of a person who lacks capacity must be done, or made, in his best interests
 5. Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action

Capacity must be assessed on a case by case basis, capacity to make a decision can vary depending on the nature of the decision and can change over time



Confidentiality

- **GDC Principle 4 - Maintain and protect patients' information Patient expectations**
- **GDC Standard 4.2 Protect the confidentiality of patients' information and only use it for the purpose for which it was given**
- Patients expect any information they provide to the dental team to be confidential
- All members of the team have a legal and ethical responsibility to maintain confidentiality in all matters relating to the patient
- Must not divulge any information relating to patients and must ensure that all measures are taken to prevent any information being inadvertently disclosed
- Never provide patient details without their expressed consent and must keep all patient information secure, so that an unauthorised person can access it

Confidentiality

- **GDC Standard 4.3: You must only release a patient's information without their permission in exceptional circumstances**
- Information can only be disclosed without patient consent in exceptional circumstances:
 - If it was of benefit to them (i.e. health was at risk)
 - In the interests of the general public
 - If it was considered that a serious crime was imminent
- If this is required, where possible the patient's consent should be sought and if not given , despite persuasion, minimal information should be released
- If considering release of information without consent, advice should be taken before doing so
- A court of law may request patient information without their consent, only necessary and sufficient details should be provided
- Patients should be made aware that their information may be shared with other healthcare professionals, and given the opportunity to consent to this
- If a patient has died their information must still be treated as confidential



Protection of patient information



Any information must be handled under the General Data Protection Regulations 2018 (GDPR) and be kept confidential unless there is permission granted to share it



Information must be stored safely, if it is forwarded it must be done so securely and when finished with must be destroyed in an appropriate manner



Dental records must be stored away from other patients, the general public and other healthcare professionals who have no need to access them



When discussing a patient's case conversations should be held in private where it can't be overheard



Computers should be password protected



Telephone calls regarding information relating to another person's appointments or a patient calling for results should be politely refused because confirmation of identity is impossible

Accusations of assault

- Any treatment undertaken without a patient's consent is regarded as assault
- Any clinician would be liable and accountable for any implications arising from that action
- Patients do sometimes make accusations of assault so a clinician must never be left alone with a patient
- Serious accusations can occur when a clinician is left alone with a clinician who is providing treatment under conscious sedation
- Drugs used can alter patient perception of what is occurring, some may have vivid dreams, believing that it really took place
- Sedated patients are more vulnerable as the drug reduces their anxiety and produces anterograde amnesia
- **If an accusation is made about the clinician and they have not been chaperoned by their nurse when providing sedation, then the clinician would be unable to defend themselves**

Preventing accusations of assault

- Consent is a must for any treatment written/ verbal
- If it is thought that a patient may make an allegation the clinician must ensure that written consent is obtained in advance
- The clinician should never undertake any treatment unless the patient fully understands the treatment plan and is happy to proceed
- Never be left alone with the patient
- If a patient has consented to a procedure there can be no grounds for a charge of battery but they may be able to claim breach of negligence

Negligence

- For a clinician to have been negligent, they will have acted outside the law and/or will have undertaken dental treatment that is not acceptable
- All clinicians have a duty of care, to ensure that patients are treated safely, with a high standard of dentistry
- When a patient is provided with sedation to receive treatment, the clinician's duty of care extends to the patient's after-care
- Patient must be discharged with their escort and post operative instructions discussed both verbally and written

Avoiding allegations of negligence

- Communicating with patients effectively regarding their treatment is vital.
- To avoid misunderstanding patients must be fully aware of which treatments are to be provided and which are not
- Obtaining written consent for the provision of treatment with sedation or when there are associated risks is paramount as this provides documentary evidence of the discussions that took place and agreed treatment
- Contemporaneous record keeping of dental notes is important as their contents will provide a record of the patient's past, present and future treatment
- They should contain any advice given and discussions held, how motivated the patient is towards their care and whether they have chosen not to take any advice given
- Any and all patient concerns should be highlighted

Avoiding allegations of negligence

- Staff should be well trained, know their role and not work outside their remit, only undertaking duties they have been trained for
- Staff should immediately record any conversations they have had with the patient over the telephone with a factual summary
- Any failed appointments and non-payments should be recorded
- Dental records should be held for the recommended period of time so that they can be referenced should a case of negligence be brought by the patient
- Safe environment should be provided for all with equipment being services at recommended intervals

References

Girdler, N.M. Hill, C.M., Wilson, K.E. Conscious Sedation for Dentistry. Second edition. Johnn Wiley and Sons. 2018

IACSD Standards for Conscious Sedation in the Provision of Dental Care: Report of the Intercollegiate Advisory Committee for Sedation in Dentistry (IACSD). 2015

SDCEP <https://www.sdcep.org.uk/wp-content/uploads/2018/07/SDCEP-Conscious-Sedation-Guidance.pdf>

GDC standards

Rogers, N. Basic guide to dental sedation nursing. Second edition.