

# The Personalized Consent Form: An Optional, but Useful Tool!

• Cyndie Dubé-Baril, DMD, LLM •

## A b s t r a c t

*Dentistry began to incorporate informed consent and risk management into its practice after 1950. Today, an obligation to ensure that the patient has accepted a given treatment and understands all its implications are part of a dentist's prime responsibilities. The purpose of this article is to inform dentists who are asking for consent that they can use a tool to make this task easier — the personalized consent form.*

**MeSH Key Words:** dental care/legislation & jurisprudence; ethics/dental; informed consent/legislation & jurisprudence

© J Can Dent Assoc 2004; 70(2):89–92  
This article has been peer reviewed.

Before providing care or treatment to a patient, the dentist must obtain the individual's free and informed consent. This requirement is based on 2 principles: personal inviolability and free will. The Quebec *Charter of Human Rights and Freedoms*,<sup>1</sup> *Canadian Charter of Rights and Freedoms*,<sup>2</sup> *Quebec Civil Code*,<sup>3</sup> *Code of Ethics of Dentists*,<sup>4</sup> *Criminal Code*<sup>5</sup> and the *Act Respecting Health Services and Social Services*<sup>6</sup> are just some of the legal provisions outlining these 2 principles.

From the legal point of view, "consent" means that the patient accepts, through an unequivocal act of will, to assume certain obligations.<sup>7</sup> This is also true in the practice of dentistry.

### Types of Consent

Consent is obtained after information is exchanged between the dentist and patient, resulting in the patient expressing his or her willingness to undergo one of the treatments being proposed. This very process is not subject to any particular form and is generally verbal.<sup>7</sup> Therefore, consent can, in principle, be expressed or implied.<sup>8–10</sup>

However, in certain cases, the form of this consent is stipulated by law, which requires that it be completed and formalized in writing.<sup>7–9</sup> To be valid, the document must include 2 important parts: a transcription of the oral explanation, which must include all the information necessary for making an informed decision, and the signature of an adequate consent form.<sup>7–9,11</sup>

Consent should nevertheless not be confused by the form in which it is given.<sup>7</sup> In no case shall consent

simply be a question of form, since it is above all entirely a matter of substance<sup>7</sup>: a signed agreement without prior explanations can never be deemed valid consent.<sup>12</sup> However, formalizing consent on paper provides easier proof that consent has been obtained.<sup>7,9,12</sup> Therefore, the form constitutes proof of consent in court, but does not prove that dentists have fulfilled their responsibility to provide information.

In certain cases, the law requires written consent, i.e., that the patient and attending dentist must confirm in writing the consent between both parties.<sup>7–9,13</sup> Therefore, written consent is mandatory for some types of medical interventions: general anesthesia, surgery and treatments received in an institution falling under the *Act Respecting Health Services and Social Services*,<sup>14</sup> as well as in cases of alienation to a person's body,<sup>13</sup> experiments<sup>13</sup> and care not required by a person's state of health.<sup>13</sup> All elective dental procedures (e.g., certain esthetic and orthodontic treatments, and the removal of asymptomatic wisdom teeth) may fall into the latter category.

Thus, although the dentist has assessed a treatment as being required for the patient's health, the judge (who is the person in charge of examining the evidence in the event of a dispute) may conclude that the treatment deemed therapeutic by the dentist was rather elective, not urgent and perhaps even unnecessary based on the provided evidence, testimony and expert statements.

## Consent Forms

There is no law that stipulates a mandatory form to commit the patient's consent in writing. However, provisions that require written consent for general anesthesia and surgery in a hospital setting stipulate that this document must contain certain items: all information for the patient on the possible risks and consequences, the signature of the patient (or that of the patient's legal guardian in the case of minors under 14 years of age or persons of full age who are unable to give consent), as well as the signature of the attending dentist.<sup>7</sup>

Regardless of the form used, what is important is that its content complies with the law and the requirements for a written agreement. Moreover, the form must not only be legible, but also intelligible for the patient,<sup>7-9,11</sup> which means that it is written using clear and precise terms. The form, which exists primarily for legal purposes, is truly effective when the patient thoroughly understands its content.<sup>8,9,12</sup>

Given the unique nature of each case, a standardized consent form should not be adopted. The information required should be given weight by the attending dentist based on the treatment, its nature (necessary, therapeutic, urgent or elective), as well as the individual patient's requirements, characteristics and expectations. Furthermore, it is not always useful and may even be restrictive to use a form with a fixed amount of space; in this instance, the result could be that the specific situation of a given patient required more detailed explanation and was not properly described due to lack of space. Thus, keeping in mind the sections required for consent, a valid solution would be to use a blank piece of paper to accurately detail the patient's personal situation for which the dentist is trying to obtain a clear and informed consent.

## Jurisprudence

In the *Walker v. Roy* case, the Quebec Superior Court<sup>15</sup> reminds us of the principle that written consent does not necessarily mean informed consent. In this case, the dentist had put dental implants in a patient. Due to complications, the implants had to be removed. The patient then instituted legal proceedings against the dentist for malpractice, having caused the failure of the treatment. In his defence, the dentist said that he had clearly explained the nature of the treatment and possible risks, and obtained written consent from the patient.

The said document signed by the patient was a form that had been recommended by the International Congress

of Oral Implantologists, a type of all-purpose form that outlines all possible consequences and contingencies of the procedure. According to the Court, this form resembled a contract of adhesion (standard form contract) — which by definition is an agreement imposed on the other party whose clauses are not subject to negotiation.<sup>16,17</sup> Consequently, in this specific case, the Court ruled that the form was prepared in favour of the dentist and to the detriment of the patient. Therefore, the patient could not have given her free and informed consent. Inasmuch as this document may constitute a contract, "The Court did not hesitate in calling the consent form abusive and declaring it inapplicable [translation]."<sup>15</sup>

The Court concluded that neither the contents of the form nor the patient's signature demonstrated that the dentist had clearly explained the nature and risks of the treatment to the patient. Since it was the Court's opinion that the patient had not given informed consent, the dentist was held liable.

For the same case, the Court of Appeal determined, without bringing up the appropriateness of the consent form, that the written consent of the patient was given for a completely different situation than what actually occurred and rejected the appeal.

In short, not only should the written information used to explain and inform a potential client of a technique in plain language not be substituted for oral explanations, but only the information that is absolutely essential for obtaining consent should be included on the

forms.<sup>8,9</sup> Moreover, signed consent is not necessarily informed consent,<sup>18</sup> hence the importance of including all relevant information in the patient's file, since notes can often offer as much legal protection as the form itself.<sup>7</sup>

It is important to be mindful and avoid any discrepancies between the notes in the patient's file and on the consent form, as was the case in the *Cantin-Cloutier v. Gagnon* ruling.<sup>19</sup>

In this case, a patient had 3 impacted wisdom teeth — elective surgery, which was neither urgent nor required for the patient's well-being. The patient experienced paresthesia and instituted legal proceedings against the dentist for failing to adequately inform her of the risks associated with the procedure.

The Court deemed that, in the context of unnecessary, elective surgery at that given time, the patient should have been informed of all possible risks. Moreover, there was some ambiguity as to whether the risks associated with the procedure were discussed, since the dentist's medical file

*Consent assumes there has been dialogue between the dentist and the patient. Obtaining the patient's signature on a form does not replace the duty of the practitioner to adequately inform the patient.*

contained an apparent contradiction: a note in the file mentioned “paresthesia discussed,” but there was no reference made to it on the consent form.

The Court is of the opinion that the consent form must accurately reflect the risks that the surgeon specifically discusses with each patient. It is not up to the health care practitioner to select in any way whatsoever the information that he considers appropriate to write on the consent form and to only mention others, which are not specified in this document, but noted in the medical file. This way of proceeding can only result in ambiguous situations as to what the patient was actually told, as is found in this case. [Translation]<sup>19</sup>

The Court, being of the opinion that Dr. Gagnon did not provide his patient with enough information as a prudent, diligent practitioner should have done in such a case to obtain the informed consent of his patient, held the dentist liable.

Thus, once a consent form has been filled in, the dentist should note it in the procedure log, and then sign and date it without adding any information, so as to avoid contradictions between his notes and the form.

Two other major points were also raised in this case. First of all, the patient must be given time to think, especially in the case of elective procedures. In the event of a dispute, the judge will determine the nature of the intervention and resulting extent of obligation. Second, the consent form must have been signed before starting the treatment, even before administering local or other anesthetic, or any other medication that could affect the patient’s judgement.

Furthermore, the jurisprudence recognizes the need to distinguish a necessary procedure from one that is purely esthetic. In the latter case, the courts require far more precise and detailed information on the procedure, risks, chances for success and possible complications.

The *Corbin v. Dupont*<sup>20</sup> case is a good example of this. Ms. Corbin, having only 7 lower teeth, consulted a dentist to obtain “fixed teeth or a fixed prosthesis.” The dentist proposed a treatment plan involving the placing of 6 implants in the maxilla and 4 in the mandible, with the placement of a fixed prosthesis. Following the failure of an implant and after noticing a lack of bone, Dr. Dupont informed the patient of the need to use removable prostheses or bone grafts in the posterior maxilla, with the placement of 2 additional implants on each side. Ms. Corbin had the treatment done elsewhere and brought Dr. Dupont to court. The ruling clearly shows that, for the patient, the esthetic aspects of the procedures were of utmost importance:

The Court lent credence to her statements when she stated that it was above all to improve her appearance and to give her confidence that she decided, in spite of her age, to subject herself to these uncomfortable and sometimes painful procedures, and that she never would have given her consent for these treatments if Dr. Dupont had provided her with all the information to which she had the right. [Translation]<sup>20</sup>

Thus, the Court held the dentist liable for failing to inform the patient. The dentist appealed, pointing out that the Superior Court had erred in its assessment of the evidence, in that there had been therapeutic indications for the treatment. Despite this, the Court of Appeals rejected the dentist’s argument.

Therefore, to avoid any confusion, it would be a good idea to have the patient write down on the consent form, in his or her own words, the reason for the consultation and the objective for having the treatment.

## Recommendations

In light of what has been discussed, the best way to ensure that the patient has understood the treatment being proposed is to have the patient write down, in his or her own words, what the dentist has explained. It is thus possible for the dentist to check how much the patient has understood and, in case of doubt or poor interpretation, provide a clearer explanation.

Any dentist can create his or her own consent form, adapted to the needs of the dentist, clients and practice. In this case, it is recommended that dentists consult a provincial or federal dental association for guidance. An example of a consent form appears in **Appendix 1** (see <http://www.cda-adc.ca/jcda/vol-70/issue-2/89.html>). This consent form for minors under 14 is used by the author in her pediatric dentistry practice.

It is important to point out that consent or refusal assumes there has been dialogue and discussion between the dentist and the patient.<sup>8,9</sup> Obtaining the patient’s signature on a form in this way does not replace the duty of the practitioner to adequately inform the patient.<sup>18</sup>

## Conclusion

This article was written to make dentists aware of their obligation to adequately inform patients before providing care and to give practitioners tools that can help them avoid disputes for failing to do so. These forms, once filled in, serve to attest that the information was provided to the patient and demonstrate the willingness to obtain consent, should it ever be required to be proven in the event of a dispute.

The obligation of informing patients is the dentist’s responsibility and his alone.<sup>4</sup> Therefore, it is recommended that this obligation not be delegated to a member of the

staff (e.g., a hygienist or assistant) or any other person. Moreover, before providing care, it is important to always examine the consent form to ensure that no ambiguity remains, and to ensure once again that the patient has completely understood. It is also suggested that the treatment be briefly reviewed before each session and that this be entered in the file. This procedure is important, since from one visit to the next, the patient may have changed his or her mind, given that consent is of a changing nature and not definite.

Of course, the law serves as a guideline for dentists, but will never replace professional judgement, which ensures the quality of the action.<sup>18</sup> No one is immune from lawsuits, not even the most experienced dentist. Vigilance and mutual respect, which should be at the very heart of the patient-dentist relationship, is the key to success. The dentist should always put himself in the patient's place and ask himself what he would want to know about the procedure if he were the patient. ♦

---

*Note: This medical-legal article is based on Quebec law, jurisprudence and doctrine. However, once the information has been adapted to the different provincial laws in effect, the basic principles apply across Canada.*

*Notice to the reader: The purpose of this article is to provide practical advice on risk management. The reader should use the services of a legal counsellor to establish a consent form adapted to his or her clientele and practice. The examples in this article were provided solely for information purposes.*

*Acknowledgements: The author would like to thank Maître J. Baril (who verified the legal aspects) and Y. Charneux (who checked syntax and spelling) for revising the manuscript.*



*Dr. Dubé-Baril holds a degree in law (UQAM, 2003), as well as a Master's in Health Law (Sherbrooke University, 2001) and practises pediatric dentistry in private practice in Brossard, Que., while attending the Quebec Bar School.*

*Correspondence to: Dr. Cyndie Dubé-Baril, 2540 Lapinière, Brossard QC J4Z 3S2. E-mail: cyndie.dube.baril@videotron.ca.*

*The views expressed are those of the author and do not necessarily reflect the opinions and policies of the Canadian Dental Association.*

---

## References

1. Charte des droits et libertés de la personne, L.R.Q., c. C-12, art. 1.
2. Canadian Charter of Rights and Freedoms, R.S.C. (1985), app. II, no. 44, Schedule B, art. 7.
3. Code civil du Québec, (1994) 25 R.D.U.S. 359, art. 10-11.
4. Code de déontologie des dentistes, R.R.Q., 1981, c. D-3, r. 4, art. 3.02.03 et 3.02.04.
5. Code criminel, L.R.C. (1985) c. C-46, art. 265 (voies de fait) et 45 (exonération possible en matière d'opérations chirurgicales).
6. Loi sur les services de santé et les services sociaux, L.R.Q., c. S-5, art. 8-9.
7. Ménard J-P. Le consentement aux soins. Dans: Le Code civil du Québec et les aspects du fonctionnement de l'établissement dans ses relations avec les usagers. Montréal, avril 1994. p. 9-77.
8. Lesage-Jarjoura P, Lessard J, Philips-Nootens S. La mise en oeuvre de l'obligation médicale: Chapitre I – L'obligation de renseigner et d'obtenir le consentement. Dans: Éléments de responsabilité médicale : Le droit dans le quotidien de la médecine. Cowansville, QC:Éditions Yvons Blais Inc., 1995. p. 109-98.

9. Kouri R, Philips-Nootens S. Le consentement aux soins: Chapitre I – Le consentement en droit québécois actuel, les qualités requises. Dans : Le corps humain, l'inviolabilité de la personne et le consentement aux soins; le regard du législateur et des tribunaux civils. Sherbrooke:Éditions Revue de Droit de l'Université de Sherbrooke, 1999. p. 213-379.
10. Baudouin J-P, Deslauriers P. Quelques régimes de responsabilité de type professionnel: Chapitre II – La responsabilité du médecin, du dentiste et de l'établissement hospitalier. Dans: La responsabilité civile. 5<sup>e</sup> édition. Cowansville, QC: Éditions Yvon Blais Inc., 1998. p. 843-96.
11. Mayrand A. L'inviolabilité de la personne humaine, Montréal:Wilson & Laffleur, 1975.
12. Le consentement aux soins, Collège des médecins du Québec, mars 1996.
13. Code civil du Québec, (1994) 25 R.D.U.S. 359, art. 24.
14. Art. 52.1 du Règlement sur l'organisation et l'administration des établissements et des régies régionales (L.R.Q., chap. S-4.2) introduit par le Décret 545-86 (1986) 118 G.O. II, 1309, amendant le Règlement sur l'organisation et l'administration des activités des établissements.
15. Walker c. Roy, [1997] R.R.A. 976 (C.S.); [2000] J.Q. no 1623, #500-09-005273-974 (C.A.).
16. Code civil du Québec, (1994) 25 R.D.U.S. 359, art. 1379-1437.
17. Cours d'administration 2000-2001 : Comment parler argent avec les patients et connaissances juridiques utiles dans la gestion d'un cabinet dentaire, Association des chirurgiens dentistes du Québec, Montréal, oct. 2000.
18. Bernadot A, Kouri R. La responsabilité civile médicale. Sherbrooke:Éditions Revue de Droit de l'Université de Sherbrooke, 1980.
19. Cantin-Cloutier c. Gagnon, [2000] J.Q. no 5214, #200-17-001424-993 (C.S.).
20. Corbin c. Dupont, [1994] A.Q. no 1248, #200-05-000828-926 (C.S.); [1997] A.Q. no 3726, #200-09-000350-949 (C.A.).

**Appendix 1 Example of a consent form for minors under age 14**

**Consent Form**  
**(Minor under age 14)**

***PART I – TO BE COMPLETED BY THE PERSON HAVING PARENTAL AUTHORITY***

Please answer the following questions carefully so we can evaluate your understanding of the explanations provided by the dentist.

Date: \_\_\_\_\_ Name of patient: \_\_\_\_\_

Your name: \_\_\_\_\_ Name of dentist: \_\_\_\_\_

Relation to child named above:  Parent  Grandparent  Other (*specify*) \_\_\_\_\_

Describe, in your own words, the reason for the consultation and your main goal in seeking treatment.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Describe, in your own words, what the dentist has explained to you regarding:

1) the diagnosed problem: \_\_\_\_\_

\_\_\_\_\_  
2) the different treatments: \_\_\_\_\_  
\_\_\_\_\_

3) the risks and chances of success: \_\_\_\_\_

\_\_\_\_\_  
4) the consequences of refusal or non-treatment: \_\_\_\_\_  
\_\_\_\_\_

Which treatments have you chosen? Why? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Do you authorize the dentist to perform these treatments?  Yes  No Costs : \_\_\_\_\_

What behaviour management techniques has the dentist described to you?

\_\_\_\_\_  
\_\_\_\_\_

Do you authorize the dentist to use these techniques?  Yes  No  
Did you understand the explanations provided?  Yes  No  
Do you have any questions?  Yes  No

Comments about the dentist and his or her dealings with the child: \_\_\_\_\_  
\_\_\_\_\_

***PART II – TO BE COMPLETED BY THE DENTIST***

Do explanations provided seem to be understood?  Yes  No

Areas to be reviewed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Diagnosis: \_\_\_\_\_

Treatments proposed and nature of treatments:  Therapeutic  Elective  Essential

(1) Preferred treatment: \_\_\_\_\_ costs : \_\_\_\_\_

(2) Alternative treatment: \_\_\_\_\_ costs : \_\_\_\_\_

(3) Alternative treatment: \_\_\_\_\_ costs : \_\_\_\_\_

Treatment chosen: \_\_\_\_\_ costs : \_\_\_\_\_

Risks and possible side effects associated with the treatments: \_\_\_\_\_  
\_\_\_\_\_

Prognosis: \_\_\_\_\_

Consequences of refusal or non-treatment: \_\_\_\_\_

Behaviour management techniques: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
*Signature of person having parental authority*

\_\_\_\_\_  
*Signature of dentist*

\_\_\_\_\_  
*Signature of witness (optional)*