The College and the community recognise that patients are entitled to make their own decisions about treatment. To do so they need access to appropriate and readily understandable information about treatment options, associated risks and the expected outcomes. This information should include, but not necessarily be limited to, information concerning the medical condition, investigation options, treatment options, benefits, possible adverse effects of investigations or treatment, and the likely result if treatment is not undertaken.

It is not possible, however, to provide complete information or predict outcomes or assess risks with absolute certainty; and patients need to be aware of this uncertainty.

An open dialogue between surgeon and patient is crucial as often the opportunity for discussion is as important for patients and their families as giving and receiving information. Surgeons should encourage patients and families to be frank and honest in giving information about their health and their concerns.

At the time of making decisions regarding treatment and investigation options patients may be sick, injured, traumatised or anxious, as their relatives may be also; surgeons understand this and should take this into account when information is shared. The language used needs to be in a form that allows the information to be understood and retained.

It is important to accept the ability of competent patients to make their own decisions about medical treatment and their right to grant, withhold or withdraw consent before or during examination, investigation, or treatment. Whilst the College produces policies and guidelines, which may be consulted in disciplinary or civil proceedings to help decide whether the surgeon has behaved reasonably in giving information, it is ultimately the role of the Courts, Tribunals or Commissions to decide the reasonableness of the surgeon’s behaviour in any given case.

Surgeons should give advice, but there should be no coercion. The patient should be free to accept or reject the advice offered.

"Informed Consent" has legal implications and may offer protection against some legal actions, so if the situation is unclear or in unusual circumstances, appropriate legal advice should be obtained.

**INFORMATION**

Surgeons should normally discuss the following information with their patients:

- The possible or likely nature of the illness or disease
- The proposed approach to investigation, diagnosis and treatment:
  - what the proposed approach entails
  - the expected benefits
  - common side effects and material risks of any intervention
  - whether the intervention is conventional or experimental
  - who will undertake the intervention
- Other options for investigation, diagnosis and treatment
- The degree of certainty of any diagnosis
- The degree of certainty about the therapeutic outcome
• The likely consequences and risks of not choosing a diagnostic procedure or treatment, or of not having any treatment

• Any significant long term physical, emotional or other outcome which may be associated with the proposed intervention

• The time involved for recovery

• The expected costs involved, including out-of-pocket costs (see position paper on Informed Financial Consent)

INFORMING PATIENTS OF RISK

Surgeons should give information about the risks of any intervention, especially those that are likely to influence the patient’s decisions. Known risks should be disclosed when an adverse outcome is common even though the detriment may be slight, or when an adverse outcome is severe even though its occurrence is rare.

In law a risk is material if in the circumstances of the particular case, a reasonable person in the patient’s position, if warned of the risk, would be likely to attach significance to it. Alternatively, a risk is material if the doctor is or should reasonably be aware that the particular patient, if warned of the risk, would be likely to attach significance to it.

When considering the need to inform a patient of a particular risk, there will be two separate matters that require consideration:

1. Would a reasonable person, in the position of the patient, be likely to attach significance to the risk?

2. Is the doctor aware, or should the doctor be reasonably aware, that this particular patient would be likely to attach significance to that risk?

A surgeon’s judgment about how to convey information concerning risk will be influenced by:

• The seriousness of the patient’s condition

• The nature of the intervention,
  For example, whether it is complex or straightforward, or whether it is necessary or purely discretionary. Complex interventions require more information, as do interventions where the patient has no symptoms.

• The more drastic the intervention or procedure, the more necessary it is to inform of risks and consequences

• The desire for information by the patient

• In some cases, the temperament and health of the patient

• The existence of emergency situations, or lack of opportunity for proper counselling or discussion, which may affect the obligations to disclose
• Special issues which arise in relation to the obtaining of consent when giving adequate information regarding children, teenagers, the intellectually disabled and those where English is not the first language

PRESENTING INFORMATION

The way the surgeon provides information should help a patient understand the illness, management options and the reasons for any intervention. It may sometimes be helpful to convey information in more than one session, and sometimes to provide written material in addition to oral information.

When giving information, surgeons should encourage the patient to ask questions and should answer them as fully as possible. Such questions sometimes will help the surgeon to ascertain what is important to the patient.

The patient should be allowed sufficient time to make a decision. He\She should be encouraged to reflect on advice, ask more questions and consult with their family or advisers. The Surgeon should assist in seeking other medical opinion where this is requested.

The use of a competent interpreter where the patient is not fluent in English is recommended  (It is preferred that such an interpreter be a trained medical interpreter and not a family member; although this is not always possible).

WITHHOLDING INFORMATION

Information should be withheld in limited extraordinary circumstances only if for example, the doctor judges on reasonable grounds that the patient's physical or mental health may be seriously harmed by the information.

If the patient expressly directs the doctor to make the decisions and does not want the offered information, the doctor still has a duty to advise the patient of material risks. Even in this case the doctor should give the patient basic information about the illness and proposed intervention. The doctor should consider seeking legal or other advice in such unusual circumstances.

EMERGENCIES

In an emergency when immediate intervention is necessary to preserve life or prevent harm it may not be possible to provide complete information or obtain written consent.

PROCESS

It should be emphasised that informed consent is a process, and not an event.

This position paper sets out in general terms the position of the College. It must be recognised that surgeons work in different jurisdictions and are bound by specific laws in each of these jurisdictions. Surgeons need to pay particular attention to legislation covering power of attorney, guardianship, blood transfusions for children without parental consent, and legal friend, or similar legislation. Developments in the law relating to end-of-life choices should also be monitored.

Specific care should be taken in circumstances involving children, the mentally impaired, unconscious patients, and in emergency situations.

It is also important to take into account cultural and religious beliefs and practices and to recognise that it is the patient's or decision maker's ultimate decision to accept, reject or qualify consent for investigations and subsequent treatments.
Whilst informed consent may not necessarily require written confirmation, it is recommended that the consent process has been undertaken, recognised and documented. This is usually undertaken by use of one of a number of 'consent forms' which vary from place to place and surgeon to surgeon.

The extent of documentation may be dictated by local legislation and practice but it is wise to record significant details of the consent as part of the patient's notes, including reference to the discussion of relevant material risks and the agreement by the patient to undergo the treatment.

In order to defend claims that “informed consent” information was not given or was inadequate, it is highly recommended that detailed notes of the discussion and all risks considered are kept by the provider.

NEGLIGENCE

Some medical negligence cases involve issues of informed consent, specifically whether a doctor has failed to meet the required standard of care by not disclosing a treatment risk. Whether the treatment risk should have been disclosed is likely to be judged in accordance with the expectations of not only a ‘reasonable’ patient but those of the particular patient, rather than in accordance with the practice of a ‘reasonable’ medical practitioner.

This is a tough standard for surgeons and it is important that a patient's individual circumstances are taken into account when obtaining informed consent.

It is generally accepted that the responsibility for ensuring a patient has the necessary information and advice lies with the surgeon who performs a procedure, operation or treatment. In the event that the treating surgeon asks another medical practitioner to obtain consent on his/her behalf, the treating surgeon remains responsible.

STANDARD CONSENT FORMS AND INFORMATION SHEETS

The use of standard ‘consent forms’ and information sheets will not necessarily be sufficient to maintain ‘informed consent’. Standard information forms are useful, but are no substitute for information to an individual patient. Under the requirements of ‘informed consent’ the information to be given to a patient must be specific to the particular patient. It must take into account the particular circumstances, and requirements, of the patient.

Similarly, a simple form signed by a patient is not conclusive proof that valid consent has been obtained.

Prepared consent forms and prepared information sheets can certainly have their place and can be used as an aid or educational tool, as well as a prompt or checklist for the discussion that must take place between doctor and patient. They are also useful for the patient to take away after the discussion as a reminder of some of the issues that have been considered. However, they are not, in themselves, adequate to ensure that informed consent has been obtained.

Disclosure of information and discussion is best performed by the surgeon who will be conducting the treatment.

ASSOCIATED DOCUMENTS

Position Paper: Excessive Fees
RACS Code of Conduct