



Chinese Medicine Council of New Zealand

Informed consent standard

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Purpose

The purpose of the informed consent standard is to set minimum standards for the process of obtaining informed consent in Chinese medicine (CM) practice. This Standard should be read in conjunction with the Councils Informed Consent Guidance document available on the Council website. This standard applies to all CM practitioners and sets out the standards of good CM practice when discussing options for treatment and obtaining informed consent from clients.

The Council recognises and seeks to give effect to Te Tiriti o Waitangi as the foundational governance document in Aotearoa New Zealand, and affirms the rights of iwi, hapū, and Māori in the shaping and governance of our nation. Te Tiriti o Waitangi also influences our roles and responsibilities as citizens in our community and shapes personal and professional conduct. As such, CM practitioners must embed culturally safe and competent practices into all aspects of CM practice and ensure that obtaining informed consent demonstrates respect for the cultural beliefs, values, and practices of all tangata whai ora.

Defining and understanding informed consent

Informed consent is a person's voluntary decision about healthcare that they make with knowledge and understanding of all the relevant information, including the risks, benefits, and costs of their treatment options.

It is the responsibility of a CM Practitioner to ensure that informed consent is obtained, and to communicate with, and work with tangata whai ora to ensure they have sufficient information to make an informed decision. Informed consent is more than signing forms and completing paperwork. Without informed consent being provided, the CM treatment provided may be unlawful.

The informed consent process acknowledges tangata whai ora rights to autonomy and freedom of choice—it recognises that they have the right to make their own decisions about their health taking into account their own beliefs and values, their culture and family life, and make choices which are most appropriate to their own circumstances. CM practitioners must ensure that when obtaining informed consent consideration is given to the cultural beliefs, values, and practices of tangata whai ora.

Practitioners are encouraged to familiarize themselves with the key principles of the Treaty of Waitangi and reflect these values in their practice. This includes creating a culturally safe environment, effectively engaging in open dialogue with Māori patients about their health beliefs, and being aware of, and responsive to, the unique healthcare needs of the Māori community. This includes when obtaining informed consent. By incorporating these actions into daily practice, practitioners can contribute to a more equitable and culturally inclusive healthcare landscape in New Zealand.

Competence to give informed consent

Tangata whai ora are presumed competent to make an informed choice or give informed consent, regardless of age, unless there are reasonable grounds for believing that they are not competent. When the patient is not competent to give informed consent, and it is not possible to involve someone in the informed consent process who is legally entitled to informed consent on the patient's behalf, you may provide treatment where:

- a) It is in the best interests of the patient, and
- b) You have taken reasonable steps to ascertain the views of the patient, and

c) Either:

- Having ascertained the patient's views and having regard for them, you believe, on reasonable grounds, that providing the care is consistent with the informed choice the person would make if they were competent, or
- Having been unable to ascertain the patient's views, you consider the views of other suitable persons interested in the person's welfare and are available to advise you.

Additionally, tangata whai ora have the right to use an advance directive in accordance with common law. This is a written or oral directive by which a tangata whai ora makes a choice about a possible future health care procedure, and which is intended to be effective only when he or she is not competent.

Competence in the context of informed consent means tangata whai ora must be able to:

- understand the nature and purpose of the proposed care and the explanations given about the possible options—including the potential risks and side effects, benefits, and costs of each option
- weigh up that information as part of the process of making their choice
- understand that they are free to choose whether they give their informed consent (including the consequences of their decision to give or withhold informed consent), and
- communicate their decision (whether by talking, using sign language or any other means).

Several other factors must also be considered, these include:

- the client's level of understanding, including language and maturity
- the seriousness of the assessment and/or treatment
- whether tangata whai ora have the capacity to give informed consent to the form of treatment proposed, for example, if they do not understand what the treatment may consist of or are unfamiliar with the techniques being discussed, and
- where tangata whai ora have diminished competence, they retain the right to make informed choices and give informed consent compatible with their level of competence.

Determining competence

CM practitioners must act in accordance with the law where tangata whai ora have compromised decision-making capacity or are unable to provide informed consent.

In any communication regarding informed consent, the CM practitioner should try to understand and validate comprehension. If there is any doubt a second opinion should be sought. Where a CM practitioner needs to obtain informed consent, they should ensure tangata whai ora are competent to give that informed consent.

Practitioners must assess competence where there are grounds for believing capacity to give informed consent may be impaired. When tangata whai ora have diminished competence, they still retain the right to make informed choices and give informed consent, to the extent appropriate to their level of competence; regardless of age. This means that while someone, other than the tangata whai ora, with legal authority needs to be involved in the informed consent process and provide their informed consent, CM practitioners need to make every effort to encourage and enable the continued involvement of tangata whai ora in the informed consent process, to their level of competence.

This person with legal authority may be:

- a parent, guardian, or carer with legal authority. Being a relative of the patient does not automatically give legal authority to informed consent on behalf of tangata whai ora
- someone with enduring power of attorney for personal care and welfare (EPOA) only has legal authority where the person has been assessed as lacking capacity and the EPOA has been 'activated'
- welfare guardian, appointed under the Protection of Personal and Property Rights Act 1988, or
- someone with enduring power of attorney for the patient's health and welfare.

When informed consent is obtained from or involves a welfare guardian or the holder of an enduring power of attorney, the practitioner must retain on the clinical file a copy of the Court Order appointing the welfare guardian, or, the enduring power of attorney, together with a record of what was agreed.

Informed consent of young people

The Code of Rights does not specify an age for informed consent. It makes a presumption that every consumer of health services/tangata whai ora is competent to make an informed choice and give informed consent unless there are reasonable grounds for believing otherwise.

Tangata whai ora, regardless of age, must be provided with information appropriate to their level of ability to understand, and they must retain the right to make informed choices and give informed consent within their capability and level of competence. Tangata whai ora over the age of 16 are considered legal adults, and when under the age of 16 may still give informed consent to care without the need for a parent/guardian/carer's approval, provided they are able to understand the nature, purpose, and consequences of the proposed treatment as well as the consequences of refusing care.

Informed consent given by a parent or guardian for the treatment of a child, or an impaired adult, does not necessarily imply assent to treatment by them. Should there be any doubts about informed consent, care must be exercised before proceeding. The CM practitioner should assess their competency and form an opinion about their ability to give informed consent.

When the patient is under 16 years of age and is deemed competent, consider involving the parent/guardian/carer in the informed consent process, and if practical gain their approval for care—even though this is not legally required. In this situation, make sure you continue to involve the tangata whai ora in the decision-making process. Because of the vulnerable nature of a young person in this situation and the risk this poses to both the tangata whai ora AND the practitioner, it is strongly recommended that a support person or chaperone is present during these consultations and treatments.

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