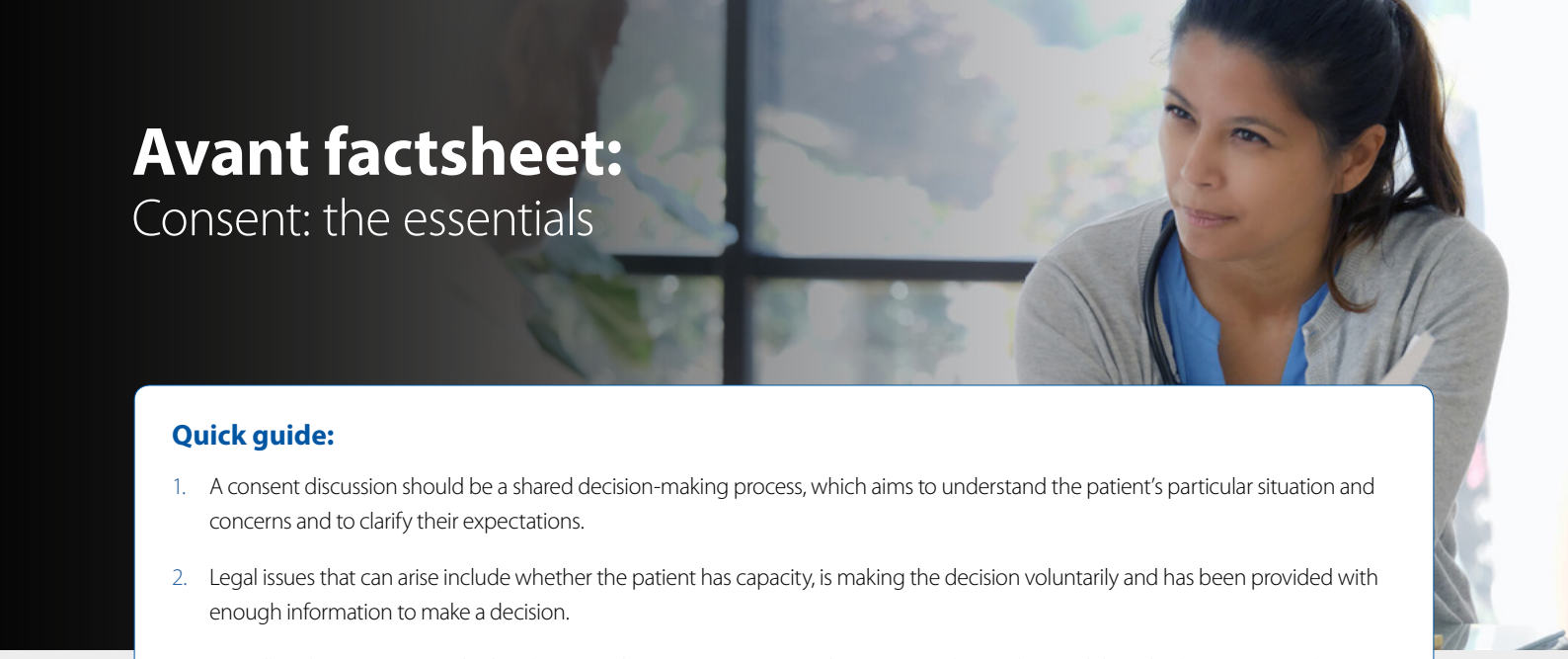

Avant factsheet:
Consent: the essentials

Quick guide:

1. A consent discussion should be a shared decision-making process, which aims to understand the patient's particular situation and concerns and to clarify their expectations.
2. Legal issues that can arise include whether the patient has capacity, is making the decision voluntarily and has been provided with enough information to make a decision.
3. As well as discussing general risks relevant to the treatment or procedure, you need to understand the risks that are material to your patient ('material risks') and have a plan in case any materialise.

Consent is a process not a form. Gaining consent from your patient means more than just going through a checklist of risks. It involves reaching a mutual understanding of what is planned, and a shared decision about the treatment. Our data indicates that complaints and claims involving consent are generally less about whether the consent process occurred and more about the quality of the consent discussion.

Shared decision making

As with many things in health care, expectations about the consent process have evolved. Patient-centred care involves engaging patients in a shared decision-making process about their treatment options. Consent does not mean imposing a decision on your patient for them to agree to, nor is it inundating the patient with information and leaving them to decipher the best course of treatment.

Ideally it involves understanding a patient's goals and concerns and supporting those with your experience and knowledge.

Informing patients means giving them context to understand the potential outcomes (positive, negative or neutral) and what that might mean for them. They give consent to the procedure or treatment on that basis.

The consent process can take more than one consultation and, wherever possible, you should give your patient the option to return another time to discuss the course of treatment.

Ask yourself the following key questions:

Capacity – Is your patient able to make this decision?

Capacity refers to a patient's ability to make a decision for themselves, including about their health care. Generally, a patient has capacity to make a decision if they can do the following with the information provided:

Understand	Understand the information and consequences relevant to the decision
Retain	Hold the information and recall the details
Weigh	Use and evaluate the information throughout the decision-making process
Communicate	Relay their decision and understanding.

Voluntariness – Is your patient making this decision freely?

Patients must give their consent freely. Patients can be more vulnerable to being unduly influenced by people, including family members or the treating team. It is your role to provide information in an unbiased way to help empower the patient to make a voluntary decision.

Be aware that a patient has a right to choose between the treatment options presented and they can withdraw consent at any time. A patient also has a right to refuse treatment or seek another opinion. If these situations arise, you should respect your patient's decision and be sure to document what was communicated.

Information – Does your patient have enough?

You must provide your patient with enough information about their condition and the treatment options for them to make an informed decision. Consider using and providing diagrams and decision aids, as research indicates that these make patients feel better informed and more clear about their final choice.

A patient must consent to a specific treatment or a procedure. This can become complicated if the treatment plan extends over a long period of time. However, you should ensure that the patient understands each step before it starts.

The information you provide to each patient should be tailored to their specific needs, particularly when discussing the risks of treatment options. However, the following issues should generally be discussed with all patients:

- **Condition –** the possible or likely nature of their illness or disease.
- **Proposed approach** to the investigation, diagnosis or management of their condition and what it involves.

  You must disclose the available evidence about the effectiveness of the treatment and whether it is conventional or experimental.

  The patient must also be told who will perform the procedure and consent to this, for example, if some or all of the procedure will be performed by an assistant or registrar.
- **Benefits** that can be expected from treatment, but also discuss the degree of uncertainty about the therapeutic outcome.
- **Risks –** including risks that are material to the particular patient as well as the general risks of the treatment or procedure (discussed further below).
- **Common outcomes and side effects –** including any significant long-term outcomes that may be associated with the proposed treatment, including physical, emotional, mental, sexual or social outcomes. It is also important to discuss the time involved in the intervention, including any recovery time.
- **Alternative options** of treatment and diagnosis. It is important to inform patients of the consequences of not choosing the proposed procedure or treatment, or of not having any procedure or treatment at all.
- **Costs –** including any out-of-pocket costs.

Explaining risks and managing expectations

Your obligation includes disclosing the general risks of the treatment options. These risks will include, for example, the known complications of a procedure, common side effects and revision rates. While it is important to know and disclose these risks, it only goes part way to fulfilling your legal obligation.

To ensure your patient has enough information to provide consent, you must discuss risks that are material to them personally. This forms part of your duty of care. Failure to discuss material risks may result in a legal claim or complaint being made against you, even if the treatment or procedure itself was not negligent. Material risks change for every patient. Some risks that you or other patients may consider to be minor may make a world of difference to a specific patient if they materialise. So, it is important to understand what matters to your patient.

You and your patient should also discuss what would happen if any of these risks were to materialise. This will help your patient to consider and plan for the unfortunate event of one of those risks actually occurring. It can help them manage and coordinate their family, work and other lifestyle commitments.

Have a clear understanding of what the patient is expecting from the treatment or the procedure. This can help inform your conversations about treatments and manage their expectations. Not achieving what the patient expected can lead to a complaint or claim.

Documenting consent

Although consent is about more than a form, it is essential to document the consent discussion. You need to make contemporaneous notes documenting your discussion with the patient whether or not your hospital or practice requires a specific form to be used.

It is particularly important to keep a record of:

- information provided about the procedure or treatment, including the aims and expected outcomes
- your discussion about specific risks and those material to the patient's circumstances
- any other procedures explored
- any patient aids or diagrams provided (make sure you keep a copy of the particular version of any printed materials), and
- any other issues or questions raised by the patient and your answers.

Certain types of procedures, including most surgical interventions, blood transfusions and chemotherapy, require written consent. Many hospital policies require particular consent forms to be used, so check your organisation's requirements. The more significant the procedure the more important it is to obtain written consent. It is essential to store any signed consent forms appropriately. Written consent forms should include the patient's confirmation that they had an opportunity to ask questions and that these were answered to their satisfaction.

How long does consent last?

Consent remains valid until it is withdrawn by the patient or until their circumstances change in a material way. However, if a significant time has passed since the original consent was obtained, you may need to update and document your discussion with the patient. If you work in a hospital you should check if it has a policy on the length of time a signed consent is considered valid.

Additional resources

You can find additional resources including articles, podcasts and webinars in the Avant Learning Centre under Consent: avant.org.au/avant-learning-centre

Avant has drawn upon the NHMRC General Guidelines for Medical Practitioners on Providing Information to Patients.