Policy name: Consent Policy 1.5

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1.5 CONSENT POLICY

1.5.1. Policy Statement

ISIGHT is committed to the care given to patients in the procedures and treatments offered within the Clinic. Consent prior to the undertaking of any procedure is of the utmost importance to protect patients and staff. Therefore, the procedure to obtain consent, either verbal or written, from patients before commencing any treatment, including the use of local or topical anaesthesia prior to any procedure, will be adopted in accordance with the Department of Health Guidelines.

1.5.2. What a consent form is for

This form documents the patient's agreement to go ahead with a proposed investigation or treatment. It is not a legal waiver – if patients, for example, do not receive enough information on which to base their decision, then the consent may not be valid, even though the form has been signed. Patients are also entitled to change their mind after signing the form, if they retain capacity to do so. The form should act as an *aide-memoire* to health professionals and patients, by providing a checklist of the kind of information patients should be offered, and by enabling the patient to have a written record of the main points discussed. In no way, however, should the written information provided for the patient be regarded as a substitute for face-to-face discussions with the patient.

1.5.3. The law on consent

See the Department of Health's *Reference guide to consent for examination or treatment* for a comprehensive summary of the law on consent (also available at www.doh.gov.uk/consent).

1.5.4. Who can give consent?

Everyone aged 16 or more is presumed to be competent to give consent for him or herself, unless the opposite is demonstrated. If a child under the age of 16 has "sufficient understanding and intelligence to enable him or her to understand fully what is proposed", then he or she will be competent to give consent for himself or herself. Young people aged 16 and 17, and legally 'competent' younger children, may therefore sign this form for themselves, but may like a parent to countersign as well. If the child is not able to give consent for him or herself, some one with parental responsibility may do so on their behalf and a separate form is available for this purpose. Even where a child is able to give consent for him or herself, you should always involve those with parental responsibility in the child's care, unless the child specifically asks you not to do so. If a patient is mentally competent to give consent but is physically unable to sign a form, you should complete this form as usual, and ask an independent witness to confirm that the patient has given consent orally or non-verbally.

1.5.5. Information

Information about what the treatment will involve, its benefits and risks (including side-effects and complications) and the alternatives to the particular procedure proposed, is crucial for patients when making up their minds. The courts have stated that patients should be told about 'significant risks, which would affect the judgement of a reasonable patient'. 'Significant' has not been legally defined, but the GMC requires doctors to tell patients about 'serious or frequently occurring' risks. In addition, if patients make clear they have particular concerns about certain kinds of risk, make sure they are informed about these risks, even if they are very small or rare. Always answer questions honestly. Sometimes, patients may make it clear that they do not want to have any information about the options but want the health care professional to decide on their behalf. In such circumstances, we should do our best to ensure that the patient receives at least very basic information about what is proposed. Where information is refused, document this in the patient's notes.

1.5.6. SCOPE

Obtaining consent applies to all Medical and Clinical staff, which are competent and knowledgeable enough to explain the proposed procedure to the patient.

1.5.7. RESPONSIBILITY

The following personnel are responsible for compliance with this policy for consent.

- Medical Director
- Surgeons / Anaesthetists
- Clinical Services Manager
- Theatre Manager
- All Clinical Staff

1.5.8. OBTAINING CONSENT

Consent must be obtained from a competent adult prior to any examination or procedure within the Clinic. This may be oral, non-verbal or written.

Patients are given the choice to bring a relative or friend with them if they so wish.

For all surgical procedures e.g. Eyelid and Intraocular surgery,– LASIK – Laser – Minor op procedures-Ivt injections, written consent must be obtained in accordance with ISIGHT consent policy.

1.5.9. Adults who are not competent to give consent:

If the patient is 18 or over and is not legally competent to give consent, you should use form 4 from the DOH (form for adults who are unable to consent to investigation or treatment) instead of this form.

A patient will not be legally competent to give consent if:

- They are unable to comprehend and retain information material to the decision and/or
- They are unable to weigh and use this information in coming to a decision.

Always take all reasonable steps (for example involving more specialist colleagues) to support a patient in making their own decision, before concluding that they are unable to do so.

Relatives **cannot** be asked to sign this form on behalf of an adult who is not legally competent to consent for him or herself.

- No one may give consent on behalf of an incompetent adult.
- Treatment may be given if within the patient's 'best interest'.

- Competent patient's wishes and beliefs must be considered prior to undertaking any procedure.

Patients who are competent to give consent but unable to sign consent form:

- A witness, such as nurse or carer may sign consent form.

Note: For consent 4 please see appendix 1.5.1 or follow the hyperlink bellow.

- hyperlink - ..\..\..\..\..\user\Rita\policies\consent form 4 (mental capacity act) 2017.rtf

1.5.10. CHILDREN

Children under the age of 16 years who fully understand the proposed procedure may consent, but parents or guardian must be present. For younger children under 16 years, consent must be given by a parent or guardian.

Children 16/17 years old may give consent themselves.

1.5.11. CATARACT SURGERY

Written consent must be obtained from the patient prior to surgery as outlined in the Cataract Management Form/ pathway,

Consent may be obtained from any Health Professional who is competent and knowledgeable in explaining the proposed procedure to the patient.

1.5.12. LASIK REFRACTIVE SURGERY

Consent may be obtained by Health Professional with appropriate knowledge of LASIK Refractive Surgery if agreed by the surgeon.

Consent must be obtained prior to patient having Valium tablets.

1.5.13. MINOR SURGERY AND LASER PROCEDURE

Consent may be obtained by Health Professional with appropriate knowledge of the proposed procedure.

1.5.14. ANAESTHESIA

Health Professional with appropriate knowledge may consent patient for Local/Topical anaesthesia prior to surgery. The overall responsibility with be that of

the anaesthetist to discuss anaesthesia with the patient prior to administering anaesthetic.

1.5.15. VIDEO/PHOTOGRAPHS

Patient will be informed and consent obtained prior to his/her procedure being used to photograph or video the procedure for the use of ISIGHT.

1.5.16. MEDICAL RECORDS

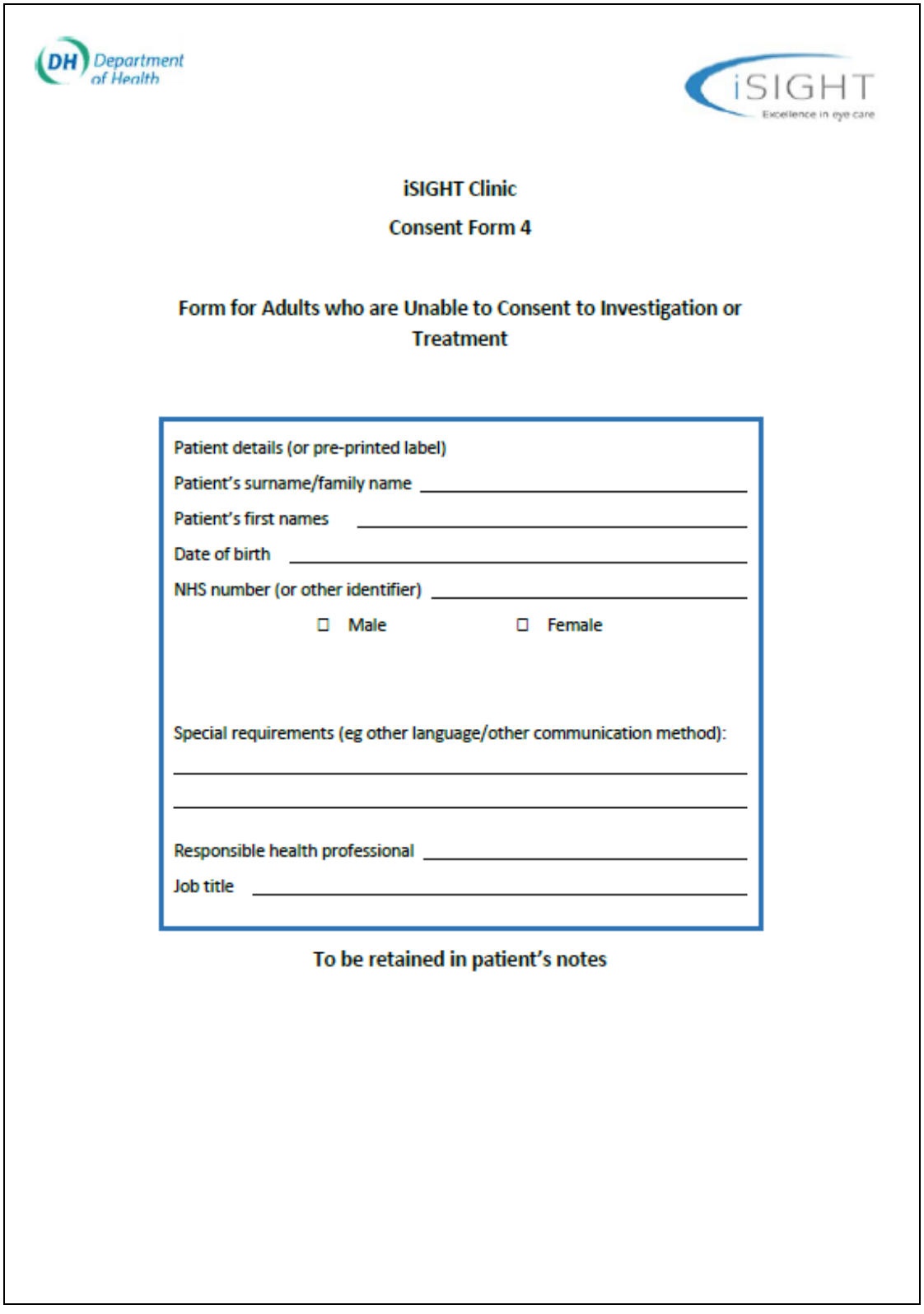
Patient's written consent will be obtained before confidential information is given out to other hospitals or requesting agency in accordance with the **Data Protection Act,** unless requested to do so under the Mental Health Act or Court of Law (1983).

Reference: Department of Health Consent: the Law in England 2001.

Mental Health Act 1983

Data Protection Act.

Appendix 1.5.1 Consent Form 4



iSIGHT Clinic

Consent Form 4

Form for Adults who are Unable to Consent to Investigation or Treatment

Patient details (or pre-printed label)

Patient's surname/family name _____

Patient's first names _____

Date of birth _____

NHS number (or other identifier) _____

☐ Male ☐ Female

Special requirements (eg other language/other communication method):

_____

_____

Responsible health professional _____

Job title _____

To be retained in patient's notes

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All sections to be completed by health professional proposing the procedure

A. Details of procedure or course of treatment proposed

_____

_____

_____

(NB see guidance to health professionals overleaf for details of situations where court approval must first be sought)

B. Assessment of patient's capacity

I confirm that the patient lacks capacity to give or withhold consent to this procedure or course of treatment because: (one or more options may be applicable)

☐ The patient is unable to comprehend the information relevant to the decision;

☐ The patient is unable to retain the relevant information;

☐ The patient is unable to use and weigh the relevant information in the decision-making process;

☐ The patient is unable to communicate their decisions by any means

Further details (for example how above judgements reached; which colleagues consulted; what attempts made to assist the patient make his or her own decision and why these were not successful):

_____

_____

_____

To aid communication, would the services of a professional (such as a Speech and Language Therapist) be helpful? ☐ Yes ☐ No

Is there a need for a more specialist assessment (Doctor or other health professional)? ☐ Yes ☐ No

C. Assessment of patient's best interests

☐ I have done everything possible to permit and encourage the patient to take part or improve their ability to take part in making the decision

☐ I have attempted to identify all the things that the patient would take into account if they were able to make the decision for themselves, including their past and present wishes and feelings and any beliefs or values

☐ I have not made assumptions about the patient's best interests simply based on their age, appearance, condition or behaviour

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☐ I have considered whether the patient is likely to regain capacity and, if so, whether the decision could be delayed until that time

☐ As far as possible, I have consulted other people (those involved in caring for the patient, interested in their welfare or the patient has said should be consulted) as appropriate

To the best of my knowledge, I have considered the patient's best interest in accordance with the requirements of the Mental Capacity Act and believe the procedure to be in the patient's best interests because:

_____

_____

_____

For life sustaining treatment:

☐ The decision is not motivated in any way by a desire to bring about the patient's death

(Where incapacity is likely to be temporary, for example if patient unconscious, or where patient has fluctuating capacity)

The treatment cannot wait until the patient recovers capacity because:

_____

_____

_____

D. Lasting Power of Attorney (LPA) or Court Appointed Deputy

I have assessed whether the patient has a Lasting Power of Attorney for personal welfare (not property and finance) or a Court Appointed Deputy that has been authorised to make decisions about this procedure.

Where the patient has authorised an attorney to make decisions about the procedure in question under a Lasting Power of Attorney, or a Court Appointed Deputy has been authorised to make decisions about the procedure is in the patient's best interests.

Signature of Attorney or Deputy

I have been authorised to make decisions about the procedure in question under a Lasting Power of Attorney/as a Court Appointed Deputy (delete as appropriate). I have considered the relevant circumstances relating to the decision in question and believe the procedure to be in the patient's best interests.

Any other comments (including any concerns about decision)

_____

_____

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Name_____ Relationship to the patient _____

Address (if not the same as patient)_____

_____

Signature _____ Date _____

A copy of the LPA or Deputy Court Order should be obtained and kept in the patient's notes.

E. Involvement of the patient's family and others close to the patient

Where the patient does not have a LPA for personal welfare or a Court Appointed Deputy with authorisation for their procedure; the final responsibility for determining whether a procedure is in an incapacitated patient's best interests lies with the health professional performing the procedure. However, as far as practical and appropriate, those close to the patient must be consulted (e.g. spouse/partner, family and friends, carer, supporter or advocate) unless you have good reason to believe that the patient would not have wished particular individuals to be consulted, or unless the urgency of their situation prevents this. "Best interests" go far wider than "best medical interests", and include factors such as the patient's wishes and beliefs when competent, their current wishes, their general well-being and their spiritual and religious welfare.

(to be signed by a person or persons close to the patient, if they wish to indicate their agreement of best interests)

NB: No relative or another person close to the patient can consent on behalf of an adult who lacks capacity to consent for themselves, unless they have been given the authority to do so under a Lasting Power of Attorney or as a Court Appointed Deputy.

I/We have been involved in a discussion with the relevant health professionals over the treatment of _____ (patient's name). I/We understand that he/she is unable to give his/her own consent, based on the criteria set out in this form. I/We also understand that treatment can lawfully be provided if it is in his/her best interests to receive it.

Any other comments (including any concerns about decision)

_____

_____

Name_____ Relationship to the patient _____

Address (if not the same as patient)_____

_____

Signature _____ Date _____

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Name_____ Relationship to the patient _____

Address (if not the same as patient)_____

_____

Signature _____ Date _____

If a person close to the patient was not available in person, has this matter been discussed in any other way (e.g. over the telephone?) ☐ Yes ☐ No

Details:_____

_____

It was not appropriate / practicable to consult the following persons for the reasons specified:

_____

F. Independent Mental Capacity Advocate (IMCA)

For decisions about serious medical treatment, where ther is no one appropriate to consult other than paid staff, has an Independent Mental Capacity Advocate (IMCA) been instructed? ☐ Yes ☐ No

NB: referral to an IMCA for other reasons, such as change of accommodation as part of hospital discharge, or where there are safeguarding concerns may need consideration (see chapter 10 of the Mental Capacity Act Code of Practice for Guidance).

Does an IMCA need to be involved? (see attached notes) ☐ Yes ☐ No

If 'No' give reasons: _____

_____

G. Signature of health professional proposing treatment

The above procedure is, in my clinical judgement, in the best interests of the patient, who lacks capacity to consent for him or herself. Where possible and appropriate I have discussed the patient's condition with those close to him or her, and taken their knowledge of the patient's views and beliefs into account in determining his or her best interests.

I have/have not sought a second opinion.

Signature _____ Date _____

Name (PRINT)_____ Job Title: _____

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If the decision concerns a period of treatment:

Date for capacity and best interests to be renewed (should there be no changed in circumstances):

_____

_____

Where second opinion sought, s/he should sign below to confirm agreement:

Where second opinion is sought she /he should sign below to confirm agreement. Reason for agreement:

_____

_____

_____

Signature _____ Date _____

Name (PRINT)_____ Job Title: _____

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Guidance to health professionals (to be read in conjunction with consent policy)

This form should only be used where it would be usual to seek written consent but an adult patient (18 or over) lacks capacity to give or withhold consent to treatment. If an adult has capacity to accept or refuse treatment, you should use the standard consent form and respect any refusal. Where treatment is very urgent (for example if the patient is critically ill), it may not be feasible to fill in a form at the time, but you should document your clinical decisions appropriately afterwards. If treatment is being provided under the authority of Part IV of the *Mental Health Act 1983*, different legal provisions apply and you are required to fill in more specialised forms (although in some circumstances you may find it helpful to use this form as well). If the adult now lacks capacity, but has clearly refused particular treatment in advance of their loss of capacity (for example in an advance directive or 'living will'), then you must abide by that refusal if it was validly made and is applicable to the circumstances. For further information on the law on consent, see the Department of Health's *Reference guide to consent for examination or treatment* (www.doh.gov.uk/consent).

When treatment can be given to a patient who is unable to consent

For treatment to be given to a patient who is unable to consent, the following must apply:

- the patient must lack the capacity ('competence') to give or withhold consent to this procedure AND
- the procedure must be in the patient's best interests.

Capacity

A patient will lack capacity to consent to a particular intervention if he or she is:

- unable to comprehend and retain information material to the decision, especially as to the consequences of having, or not having, the intervention in question; and/or
- unable to use and weigh this information in the decision-making process.

Before making a judgement that a patient lacks capacity you must take all steps reasonable in the circumstances to assist the patient in taking their own decisions (this will clearly not apply if the patient is unconscious). This may involve explaining what is involved in very simple language, using pictures and communication and decision-aids as appropriate. People close to the patient (spouse/partner, family, friends and carers) may often be able to help, as may specialist colleagues such as speech and language therapists or learning disability teams, and independent advocates or supporters.

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Capacity is 'decision-specific': a patient may lack capacity to take a particular complex decision, but be quite able to take other more straight-forward decisions or parts of decisions.

Best interests

A patient's best interests are not limited to their best medical interests. Other factors which form part of the best interests decision include:

- the wishes and beliefs of the patient when competent
- their current wishes
- their general well-being
- their spiritual and religious welfare

Two incapacitated patients, whose *physical* condition is identical, may therefore have different best interests.

Unless the patient has clearly indicated that particular individuals should not be involved in their care, or unless the urgency of their situation prevents it, you should attempt to involve people close to the patient (spouse/partner, family and friends, carer, supporter or advocate) in the decision-making process. Those close to the patient cannot require you to provide particular treatment which you do not believe to be clinically appropriate. However they will know the patient much better than you do, and therefore are likely to be able to provide valuable information about the patient's wishes and values.

Second opinions and court involvement

Where treatment is complex and/or people close to the patient express doubts about the proposed treatment, a second opinion should be sought, unless the urgency of the patient's condition prevents this. Donation of regenerative tissue such as bone marrow, sterilisation for contraceptive purposes and withdrawal of artificial nutrition or hydration from a patient in PVS must never be undertaken without prior High Court approval. High Court approval can also be sought where there are doubts about the patient's capacity or best interests.