Guidelines for Obtaining Informed Consent

Note: This form represents sample informed consent provisions. It is not intended to serve as legal advice, and each state may require unique provisions. You are encouraged to have this form reviewed and approved by counsel in your state before using it.

What is Informed Consent:

The legal doctrine of informed consent requires that patients, after being fully informed of such things as the proposed treatment and the related benefits, risks, and consequences, consent to treatment before an orthodontist administers treatment to that patient. This requirement includes the obligation to disclose information to the patient. The legal requirements for informed consent require that certain information be disclosed to the patient and specify how consent should be obtained. The generally accepted rule is that the orthodontist must inform the patient of the nature, purpose, risks, and benefits of any treatment he/she proposes to perform, the chances of success with the proposed treatment, as well as any alternative forms of treatment that may exist for the patient's conditions, and risks of not undergoing treatment. The legal requirements and levels of specificity vary substantially from state to state and sometimes even from case to case. It is safe to say that there is no uniform single set of legal requirements for informed consent. The orthodontist should disclose all of the information that a reasonable and prudent person would find material to making a decision and that a reasonable practitioner would make under the same or similar circumstances. To determine what a reasonable patient would find material to making a decision, doctors are compelled to engage in a discussion with each patient. This is an idealized version of how informed consent operates under the patient-oriented standard.

The Informed Consent Form:

Depending upon the type of treatment at issue, the orthodontist should conduct the informed consent counseling session with patients and, when applicable, their parents or legal guardians. This session should be conducted before any treatment has commenced. The orthodontist should inquire whether or not there are any questions about the nature and purpose of the proposed treatment, major risks, possible alternatives, chances of success, risks of not undergoing treatment, and major benefits. Risks that may be applicable to the particular patient, concerns expressed by the patient, and anticipated limitations should be recorded. If the patient is a minor or, for some reason, unable to provide binding consent, then his/her parent or legal guardian should sign the form. Otherwise, the patient should sign the form. For patients who reach the age of majority or become emancipated minors during treatment, it is appropriate to conduct a second informed consent counseling session with them. They must also sign the consent to treatment and acknowledgment of informed consent. Additionally, if the proposed treatment plan is substantially altered during the course of treatment, then another informed consent counseling session and form should be completed.

Guidelines for Use of this Form:

This form should not be regarded as legal advice or an attempt to define the standard of care. State legal standards (laws and court cases) vary and may also be modified from time to time. Likewise, each case is different. Therefore, before adopting any forms or procedures for your practice, you are encouraged to obtain legal advice from an attorney licensed to practice law in your state. Every few years, your attorney should re-evaluate your forms and procedures to make sure that they comply with current legal standards.