



Section 42K Notice

When the patient is unable to consent and there is no person responsible

About this notice

Sometimes a person is unable to consent to medical or dental treatment. Usually the person responsible for them can consent to treatment¹. However, where the registered practitioner, after making reasonable efforts, is unable to contact the person responsible or there is no person responsible, treatment can still be provided so long as:

- the treatment is in the best interests of the patient
- the practitioner complies with the requirements set out in section 42K of the *Guardianship and Administration Act 1986*, by providing a notice to the Public Advocate.

Section 42K – the process

The attached notice has been prepared to assist practitioners to provide the Office of the Public Advocate (OPA) with the required information.

1. Complete the notice.
2. Ensure that the practitioner performing or supervising the procedure has authorised the notice to be provided to OPA. The details of the practitioner performing or supervising the procedure are now set out at the beginning of the notice. This person provides OPA with the notice, but is not legally required to sign the notice. This may be done by someone authorised to sign by the practitioner performing or supervising the procedure.
3. Fax the completed notice with a cover sheet addressed for the urgent attention of the Advice Service, Office of the Public Advocate, to 1300 787 510.
4. The OPA Advice Service will then telephone the registered practitioner or the person authorised to submit the notice to confirm receipt of the notice, and to ascertain whether the legislative requirements have been met.

It is not OPA's role to provide consent under Section 42K. Please note that under this Act, the Public Advocate may make an application to VCAT in relation to any matter, question or dispute relating to medical or dental treatment.

Section 42K Notice Requirements: *Guardianship and Administration Act 1986*

S42K(1)(c) The practitioner, before carrying out, or supervising the carrying out of, the medical or dental treatment, gives notice to the Public Advocate in accordance with sub-section (2).

S42K(2) A notice referred to under sub-section (1)(c) must include the following information:

- a. the nature of the patient's condition
- b. the medical or dental treatment the registered practitioner proposes carrying out on the patient
- c. that the practitioner believes on reasonable grounds that the proposed treatment is in the best interests of the patient; and
- d. that despite reasonable efforts by the practitioner, the practitioner has been unable to ascertain whether there is a person responsible for the patient or, if there is a person responsible, the practitioner has been unable to ascertain who that person is or to contact that person.

S42K(3) A registered practitioner who carries out, or supervises the carrying out of, medical or dental treatment on a patient under this section must state in writing on the clinical records relating to that patient:

- a. why the treatment is considered to be in the best interests of the patient; and
- b. how the treatment is considered to promote or maintain the health and well being of the patient.

¹For information about the person responsible and their role see the Office of the Public Advocate Fact Sheet *Medical/Dental treatment for patients who cannot consent – person responsible*.



Section 42K Notice

When the patient is unable to consent and there is no person responsible
Section 42K of the Guardianship and Administration Act 1986

Notice is given by:

1.*The practitioner supervising or carrying out the treatment

Name of supervising practitioner or practitioner carrying out treatment	
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2.* Regarding:

Name of patient	
Address of patient	
Date of patient's birth	
What is the patient's disability ?	

3. Consent and the person responsible

1.*	How did you determine that the patient was unable to consent to the treatment?	
2.*	What reasonable efforts did you make to find the person responsible to provide consent for the treatment?	
3.	Are you aware of anyone who opposes the treatment? If so, provide name and contact details.	

4. The treatment

4.*	What is the patient's medical/ or dental condition ?	
5.*	Details of the proposed medical/ or dental treatment (e.g. Operations, intrusive examinations, anaesthetics, or rehabilitative care.)	
6.*	Why do you believe the treatment is in the best interests of the patient ?	

7.	What are the wishes of the patient in regard to the proposed treatment?	
8.	What consequences to the patient would there be if the treatment were not carried out?	
9.	What are the nature and degree of any significant risks associated with the proposed treatment or any alternative?	
10.	What alternative treatment (if any) is available and why is that not considered to be appropriate?	
11.*	What is the proposed date of the treatment?	

5. Clinical notes

Note: Pursuant to the legislation, a note must be made in the patient's clinical records by the registered practitioner explaining why the treatment is considered to be in the best interests of the patient and how the treatment will promote or maintain the health and wellbeing of the patient.

6.* Signature and contact information

Signature of the person submitting notice		
Name of person submitting notice		
If person submitting notice is not the treating or supervising practitioner, state how authorised by the treating or supervising practitioner to submit notice		
Address of the treating/supervising practitioner		
Contact numbers	Treating/supervising practitioner	Phone: () Fax: ()
	Person providing advice (if different from above)	Phone: () Fax: ()
Date		
Do you want written confirmation of compliance?	Yes	No

7. Fax this notice to the Office of the Public Advocate on 1300 787 510.

Note: The above fax number is only checked Monday to Friday between 9am-5pm. If faxed outside of these hours it will not be attended to until the next working day. If the matter is urgent outside office hours, call 1300 309 337.

Office of the Public Advocate

Level 5, 436 Lonsdale Street, Melbourne Victoria 3000.

PO Box 13175 Law Courts Victoria 8010. DX 210293

Tel: 1300 309 337 Fax: 1300 787 510

www.publicadvocate.vic.gov.au