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| Significant treatment clinical guidelines for the Medical Treatment Planning and Decisions Act 2016  For health practitioners |
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| Department of Health |
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# Introduction

The *Medical Treatment Planning and Decisions Act 2016* requires medical treatment decisions for people without decision-making capacity to be based on what the person would have wanted in the circumstances. The Act allows people to make decisions in advance, through an advance care directive about medical treatment they would or would not want, if they lose decision-making capacity in the future. A person’s informed decision should be respected and given effect to.

The Act also allows a person to appoint a medical treatment decision maker who will make medical treatment decisions on their behalf if they do not have decision-making capacity. The medical treatment decision maker is required to make the decision they reasonably believe the person would have made, if the person had capacity to make a decision. A decision by a medical treatment decision maker has the same effect as if the person had capacity and made the decision themselves, unless a medical treatment decision maker is refusing significant treatment and the health practitioner believes the patient’s preferences and values are not known.

If the health practitioner makes reasonable efforts in the circumstances to locate an advance care directive and/or a medical treatment decision maker, but is unable to locate either, the Act provides a process for proceeding. In such cases the Act requires health practitioners to decide whether medical treatment for people who do not have decision-making capacity is routine or significant.

These are clinical guidelines to help health practitioners determine whether medical treatment for a person without decision-making capacity is routine or significant and accompanies *A guide to the Medical Treatment Planning and Decisions Act 2016: for health practitioners*.

# When to use these clinical guidelines

These clinical guidelines apply if:

* a person does not have decision-making capacity, no instructional directive can be found and no medical treatment decision maker is available; or
  + significant treatment is being refused by a medical treatment decision maker and the health practitioner believes the patient’s preferences and values are not known.

If the medical treatment is significant, the health practitioner must notify the Public Advocate.

These clinical guidelines do not apply if:

* medical treatment is required in an emergency to save the person’s life, prevent serious damage to their health or prevent them from suffering significant pain or distress; or
  + the medical treatment is palliative care.

In these cases, health practitioners may provide treatment without consent to a person who does not have decision-making capacity.

These guidelines detail the distinction between routine and significant treatment.

# Role of the medical treatment decision maker

## Who is the medical treatment decision maker?

There can only be one medical treatment decision maker at a time. A medical treatment decision maker is the first person listed below that is available, willing, and able to make the decision:

* an appointed medical treatment decision maker
* a guardian appointed by Victorian Civil and Administrative Tribunal (VCAT) with the power to make medical treatment decisions
* the first of the following persons who is in a close and continuing relationship with the person:
  + - * the spouse or domestic partner of the person
      * the primary carer of the person
      * the oldest available adult child of the person
      * the oldest available parent of the person
      * the oldest available adult sibling of the person.

If a person does not have decision-making capacity, a decision maker must always be used if available regardless of whether the treatment is routine or significant.

## What if no medical treatment decision maker is available?

The health practitioner must obtain consent from the Public Advocate before a person can be given significant treatment if:

* there is no instructional directive, and
  + the health practitioner has made reasonable efforts in the circumstances to locate a medical treatment decision maker, but there is none or no one is willing and available.

If the medical treatment is routine, the health practitioner may proceed without consent, but must record this in the clinical record.

## What if the medical treatment decision maker is refusing significant treatment when the person’s preferences and values are not known?

The health practitioner must notify the Public Advocate if:

* the medical treatment decision maker is refusing treatment that is significant treatment, and
* the health practitioner reasonably believes the patient’s preferences and values are not known or are unable to be known or inferred.

# What is significant treatment?

**Significant treatment** is any medical treatment of a person that involves any of the following:

* a significant degree of bodily intrusion
* a significant risk to the person
* significant side effects
  + significant distress to that person.

**Routine treatment** is any treatment that is not significant treatment.

## Identifying significant distress

Medical treatment that is otherwise routine may become significant, because of the significant distress it causes the person.

Health practitioners must assess significant distress according to the particular circumstances of the person. Health practitioners must consider the person’s response in light of their ordinary behaviour and their current presentation in order to determine whether the medical treatment will cause significant distress.

## When do I need to get consent from the Public Advocate?

If the treatment you intend to provide is:

* **surgical** go to [page 6](#_Section_1:_Surgical)
* **physical (including allied health**) go to [page 8](#_Section_2:_Physical)
* **pharmaceutical** go to [page 10](#_Section_3:_Pharmaceutical)
* **dental** go to [page 12](#_Section_4:_Dental)
* **investigative and diagnostic** go to [page 14](#_Section_5:_Investigative)
  + **mental health** go to [page 16](#_Section_6:_Mental).

# Section 1: Surgical treatments

In considering whether a surgical treatment is significant or routine, the health practitioner must recognise that just because they routinely perform a procedure, this does not mean that it is routine treatment.

|  |
| --- |
| Where surgery will cause significant distress or significant risk of side effects or harm to the patient, the surgery will be significant, even though it might be an example below of routine treatment. |

Any surgical treatment that requires a general anaesthetic will be significant treatment.

Possible examples

| Routine treatments | Significant treatments |
| --- | --- |
| local anaesthetic  needles – subcutaneous / intramuscular / intravenous (cannula)  suturing a wound  acupuncture  drainage or lancing an abscess  skin lesion removal  indwelling catheter  setting a fracture (unless using a general anaesthetic)  laser treatment  superficial biopsy – skin  enemas. | requiring general anaesthetic  epidural anaesthetic  cardiac thoracic surgical procedures such as, coronary artery bypass grafts surgery, valve replacement, cardiac transplant  abdominal surgery-colectomy, cholecystectomy, pancreatectomy, laparotomy  ear, nose and throat surgery, including tonsillectomy  vertebroplasty  mastectomy with and without axillary clearance  genitourinary tract surgery, such as nephrectomy, prostatectomy, renal transplant  respiratory surgery, such as lung transplant, lung resection, tracheostomy  joint operations  neurosurgery  eye surgery, including retina repair, enucleation  internal biopsy  cataract surgery. |

Health practitioners must obtain consent from the Public Advocate if the medical treatment is significant.

If treatment is routine, the health practitioner may proceed without consent but must record this decision in the person’s clinical record.

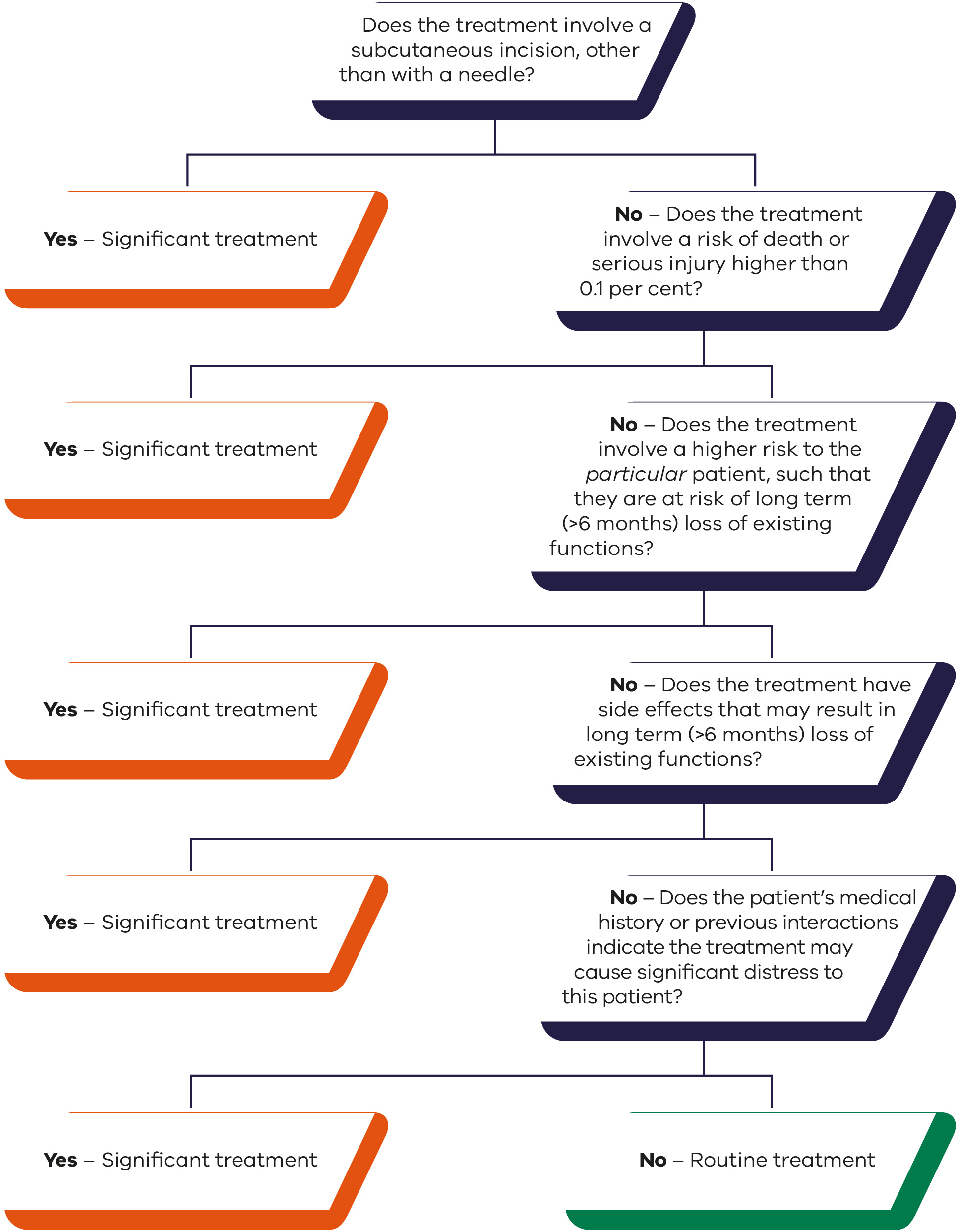
If a treatment is ongoing, the health practitioner may record the period over which it is provided in the medical record once.

The health practitioner must record any changes in circumstances that lead to reconsideration as to whether treatment is routine or significant.

If a medical treatment decision maker has refused medical treatment, and the health practitioner considers that the consequences of the refusal are significant and the health practitioner reasonably believes the preferences and the person’s values are not known or are unable to be known or inferred, the health practitioner must notify the Public Advocate. The Public Advocate will determine whether this refusal was reasonable.

If the treatment is not listed in the examples, use the flowchart below to determine whether the treatment is significant or routine. **If the treatment is significant, the health practitioner must obtain consent from the Public Advocate.**

**Figure 1: Surgical treatments decision-making pathway**



# Section 2: Physical (including allied health) treatment

In considering whether a physical treatment is significant or routine, the health practitioner must recognise that just because they routinely perform a procedure, this does not mean that it is routine treatment.

|  |
| --- |
| Where physical treatment will cause significant distress or significant risk of side effects or harm to the patient, the treatment will be significant, even though it might be an example below of routine treatment. |

Possible examples

| Routine treatments | Significant treatments |
| --- | --- |
| visual examination (not treatment)  dressing a wound  physical examination (touching the patient)  rehabilitative exercises, including physiotherapy, occupational therapy and speech pathology  ear wax removal  pressure stocking  orthosis, including ankle foot orthosis and others  oxygen therapy  personal care, such as hygiene care. | spinal manipulation  vacuum assisted closure (VAC) dressing  non-invasive ventilation (CPAP/BIPAP)  external cardiac pacing. |

Health practitioners must obtain consent from the Public Advocate if the medical treatment is significant.

If treatment is routine, the health practitioner may proceed without consent but must record this decision in the person’s clinical record.

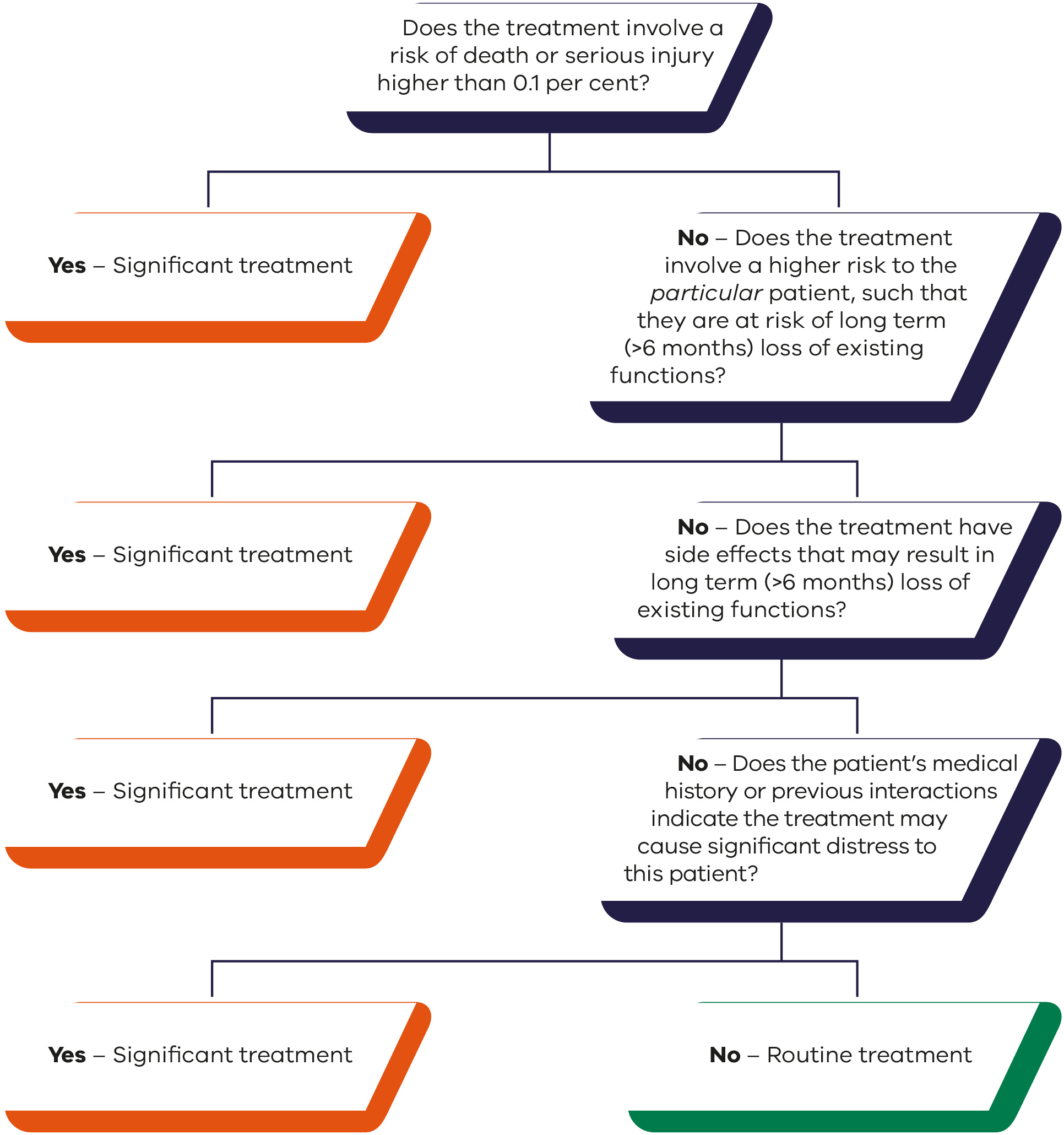
If a treatment is ongoing, the health practitioner may record the period over which it is provided in the medical record once.

The health practitioner must record any changes in circumstances that lead to reconsideration as to whether treatment is routine or significant.

If a medical treatment decision maker has refused medical treatment, and the health practitioner considers that the consequences of the refusal are significant and the health practitioner reasonably believes the preferences and the person’s values are not known or are unable to be known or inferred, the health practitioner must notify the Public Advocate. The Public Advocate will determine whether this refusal was reasonable.

If the treatment is not listed in the examples, use the flowchart below to determine whether the treatment is significant or routine. **If the treatment is significant, consent must be obtained from the Public Advocate.**

**Figure 2: Physical (including allied health) treatment decision-making pathway**

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# Section 3: Pharmaceutical treatment

In considering whether a pharmaceutical treatment is significant or routine, the health practitioner must recognise that just because they routinely provide the pharmaceutical, this does not mean that it is routine treatment.

|  |
| --- |
| Where pharmaceutical treatment will cause significant distress or significant risk of side effects or harm to the patient, the pharmaceutical treatment will be significant, even though it might be an example below of routine treatment. |

Possible examples

| Routine treatments | Significant treatments |
| --- | --- |
| standard antibiotics  enema  analgesic-paracetamol, aspirin  vaccinations  anti-platelet therapy  Ventolin and other inhalers  Insulin and oral hypoglycaemics  anti-epileptics  oral or rectal aperients. | antibiotics (rarely used, such as for tuberculosis)  chemotherapy  general anaesthetic  antidepressants  antipsychotics  epidural or spinal anaesthesia  immunotherapy  opioids through intrathecal (continuous infusion)  insulin pump  anticoagulants  radiotherapy  hormonal implants  HIV treatment  PICC line insertion. |

Health practitioners must obtain consent from the Public Advocate if the medical treatment is significant.

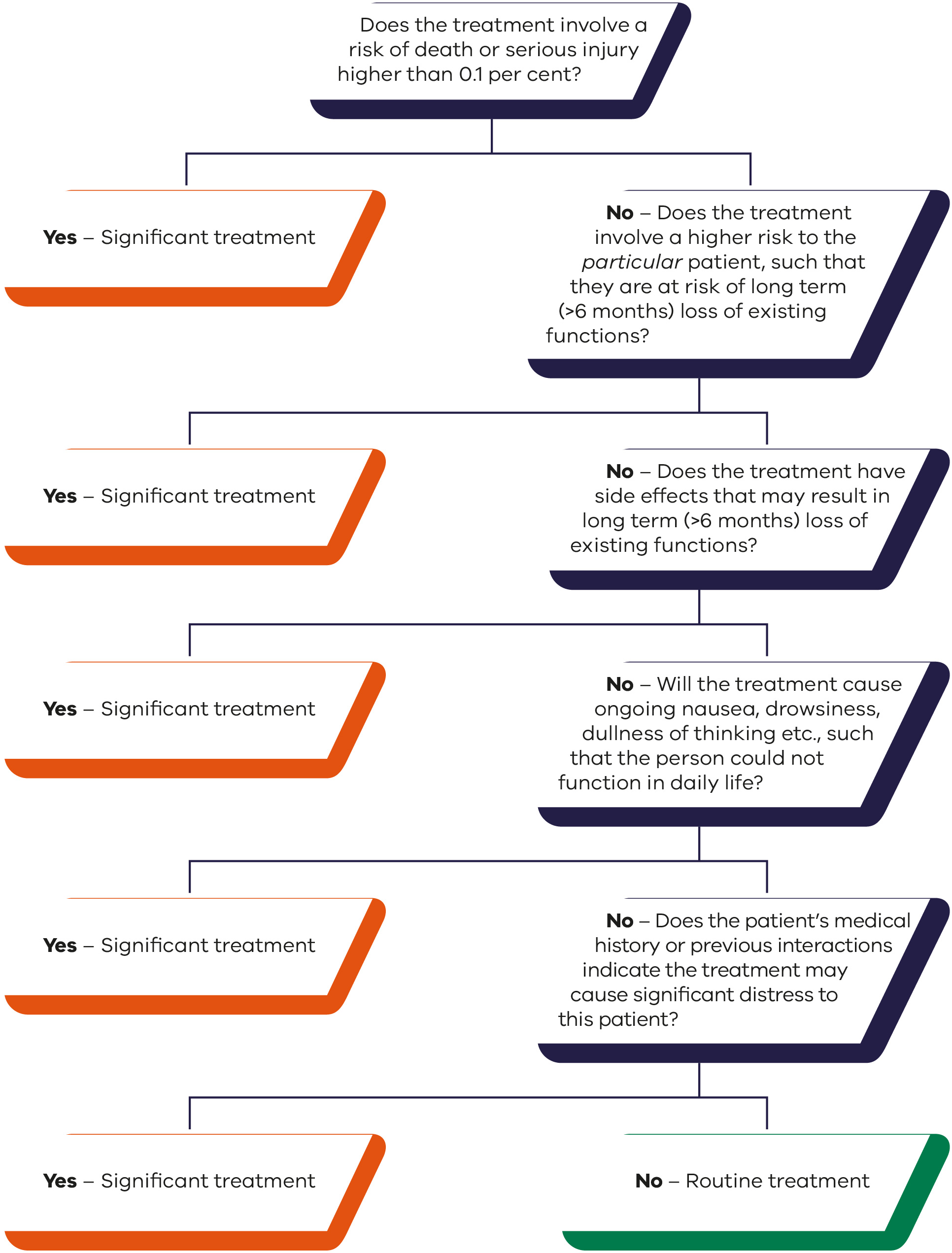
If treatment is routine, the health practitioner may proceed without consent but must record this decision in the person’s clinical record.

If a treatment is ongoing, the health practitioner may record the period over which it is provided in the medical record once.

The health practitioner must record any changes in circumstances that lead to reconsideration as to whether treatment is routine or significant.

If a medical treatment decision maker has refused medical treatment, and the health practitioner considers that the consequences of the refusal are significant and the health practitioner reasonably believes the preferences and the person’s values are not known or are unable to be known or inferred, the health practitioner must notify the Public Advocate. The Public Advocate will determine whether this refusal was reasonable.If the treatment is not listed in the examples, use the flowchart below to determine whether the treatment is significant or routine. **If the treatment is significant, consent must be obtained from the Public Advocate.**

Figure 3: Pharmaceutical treatment decision-making pathway



# Section 4: Dental treatment

In considering whether a dental treatment is significant or routine, the health practitioner must recognise that just because they routinely provide the dental treatment, this does not mean that it is routine treatment.

|  |
| --- |
| Where dental treatment will cause significant distress or significant risk of side effects or harm to the patient, the dental treatment will be significant, even though it might be an example below of routine treatment. |

Possible examples

| Routine treatments | Significant treatments |
| --- | --- |
| examination  teeth cleaning  intra-coronal fillings  dental radiographic imaging  simple tooth (uncomplicated) extraction. | general anaesthetic (any treatment involving)  surgical tooth extraction  dental implants  extra-coronal fillings  periodontal treatment  other surgical treatments (for example, odontogenic cysts, tumours, fractures)  sedation. |

Health practitioners must obtain consent from the Public Advocate if the medical treatment is significant.

If treatment is routine, the health practitioner may proceed without consent but must record this decision in the person’s clinical record.

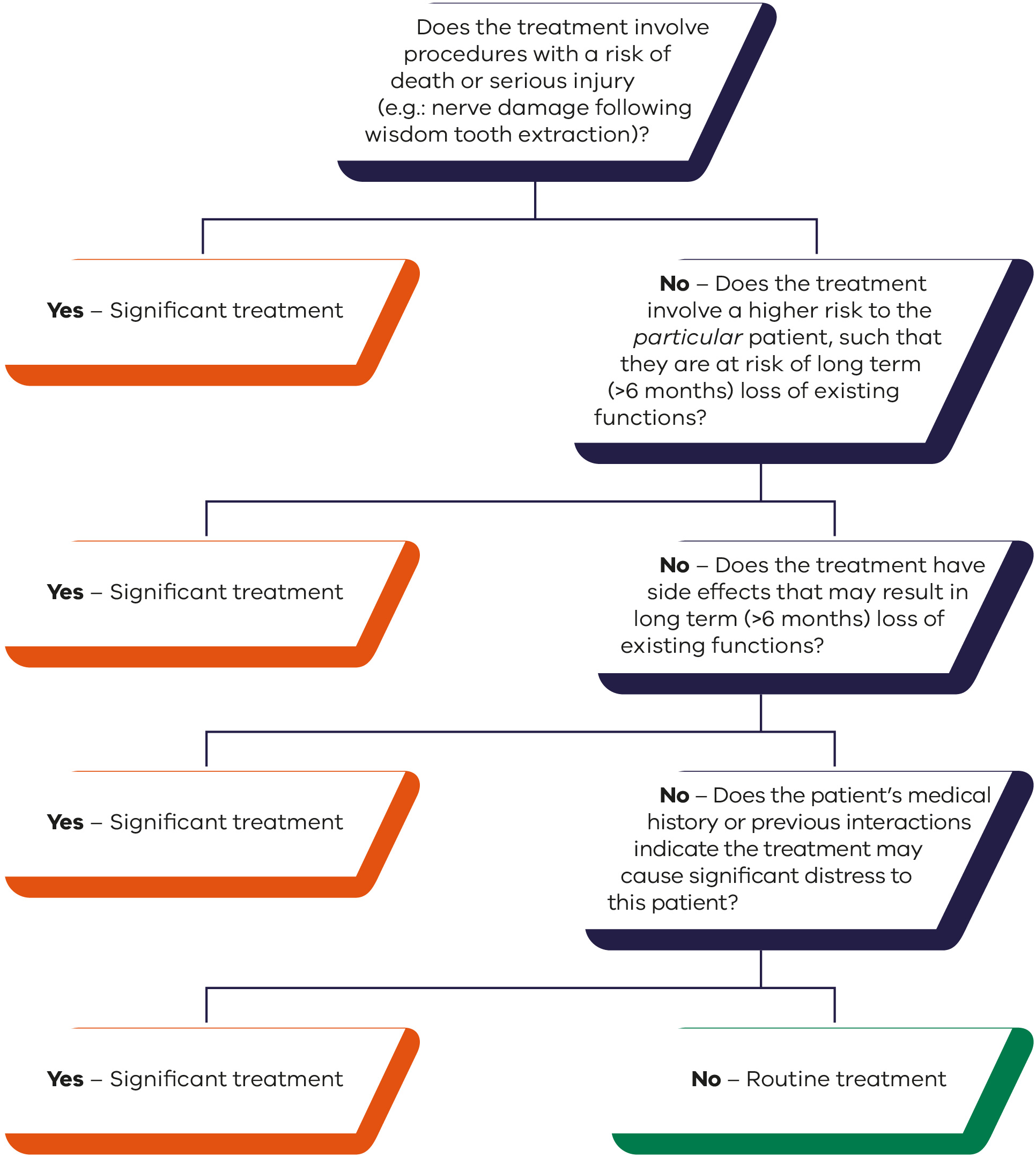
If a treatment is ongoing, the health practitioner may record the period over which it is provided in the medical record once.

The health practitioner must record any changes in circumstances that lead to reconsideration as to whether treatment is routine or significant.

If a medical treatment decision maker has refused medical treatment, and the health practitioner considers that the consequences of the refusal are significant and the health practitioner reasonably believes the preferences and the person’s values are not known or are unable to be known or inferred, the health practitioner must notify the Public Advocate. The Public Advocate will determine whether this refusal was reasonable.

If the treatment is not listed in the examples, use the flowchart below to determine whether the treatment is significant or routine. **If the treatment is significant, consent must be obtained from the Public Advocate.**

Figure 4: Dental treatment decision-making pathway



# Section 5: Investigative and diagnostic

In considering whether investigative and diagnostic procedures are significant or routine, the health practitioner must recognise that just because they routinely provide the investigative and diagnostic procedures, this does not mean that they are routine treatment.

|  |
| --- |
| Where investigative and diagnostic treatment will cause significant distress or significant risk of side effects or harm to the patient, the treatment will be significant, even though it might be an example below of routine treatment. |

Possible examples

| Routine treatments | Significant treatments |
| --- | --- |
| radiological  x-rays  plan radiographs  Computed tomography scans (CT) - no contrast  ultrasounds (including of heart)  dental radiographic imaging  electroencephalogram (EEG) and electrocardiogram (ECG)  exercise / stress testing  respiratory function test  Tilt table test – cardiac / hypotension  mammogram  halter monitors  bone mineral density  audiology. | radiological  Magnetic Resonance Imaging (MRI)  Computed tomography scans (CT) - with contrast  other nuclear medicine  cone beam computerised tomography (CBCT)  scope  bronchoscopy  colonoscopy  gastroscopy  angiogram, for example cardiac  laparoscopy  transvaginal ultrasound  procedure under sedation. |

Health practitioners must obtain consent from the Public Advocate if the medical treatment is significant.

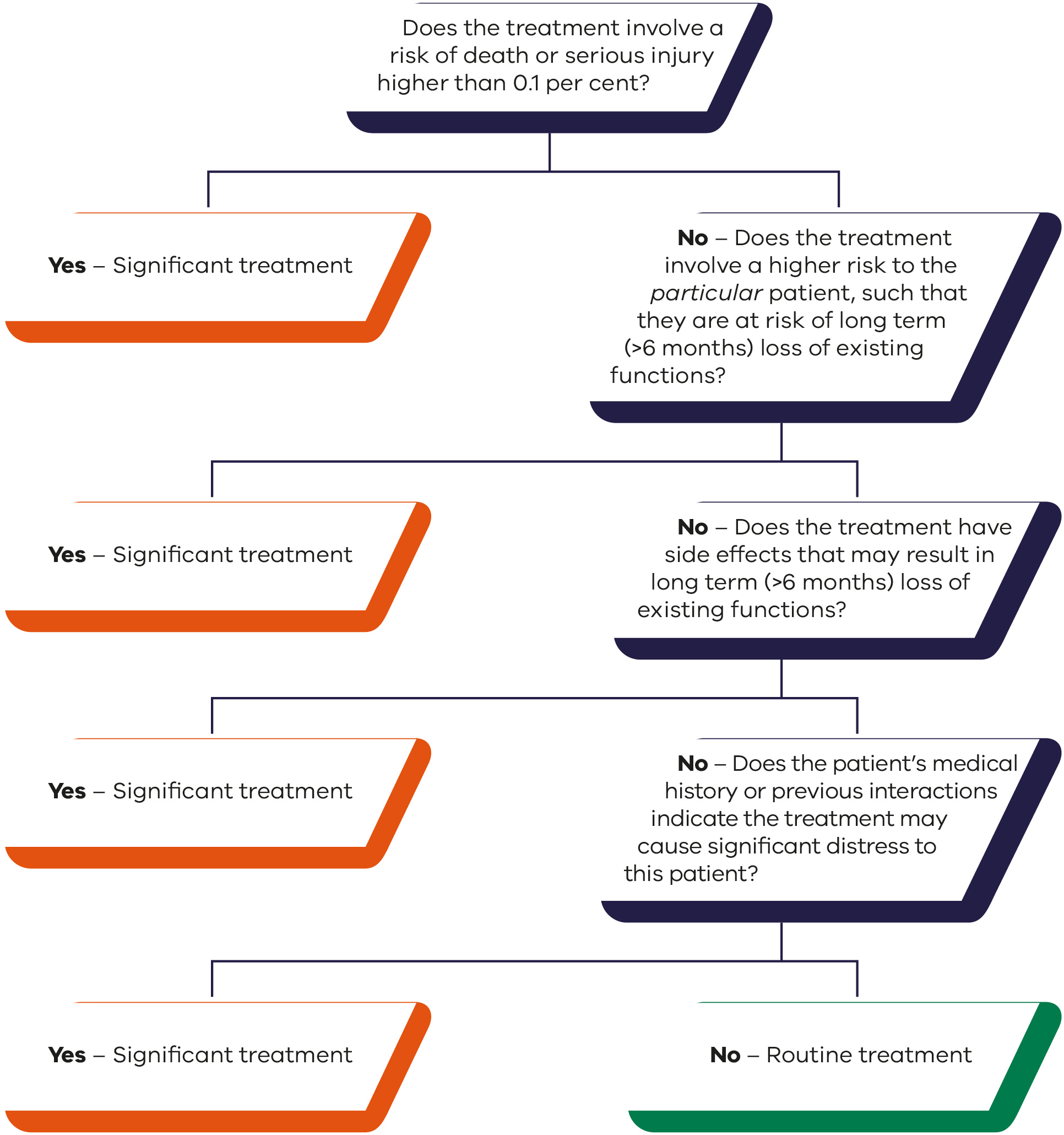
If treatment is routine, the health practitioner may proceed without consent but must record this decision in the person’s clinical record.

If a treatment is ongoing, the health practitioner may record the period over which it is provided in the medical record once.

The health practitioner must record any changes in circumstances that lead to reconsideration as to whether treatment is routine or significant.

If a medical treatment decision maker has refused medical treatment, and the health practitioner considers that the consequences of the refusal are significant and the health practitioner reasonably believes the preferences and the person’s values are not known or are unable to be known or inferred, the health practitioner must notify the Public Advocate. The Public Advocate will determine whether this refusal was reasonable.If the treatment is not listed in the examples, use the flowchart below to determine whether the treatment is significant or routine. **If the treatment is significant, consent must be obtained from the Public Advocate.**

Figure 5: Investigative and diagnostic decision-making pathway



# Section 6: Mental health treatment

In considering whether mental health treatment is significant or routine, the health practitioner must recognise that just because they routinely provide mental health treatment, this does not mean that it is routine treatment.

|  |
| --- |
| Where mental health treatment will cause significant distress or significant risk of side effects or harm to the patient, the treatment will be significant, even though it might be an example below of routine treatment. |

Neurosurgery and Electroconvulsive therapy for mental illness is managed through the Mental Health Act 2014.

Pharmaceutical mental health treatment is included in ‘Section 3: Pharmaceutical treatment’.

**Possible examples**

| Routine treatments | Significant treatments |
| --- | --- |
| psychotherapy to adjust to new circumstances. For example:  post-stroke psychotherapy  pre- and post-amputation  grief counselling. | psychotherapy for major psychological disorders. |

Health practitioners must obtain consent from the Public Advocate if the medical treatment is significant.

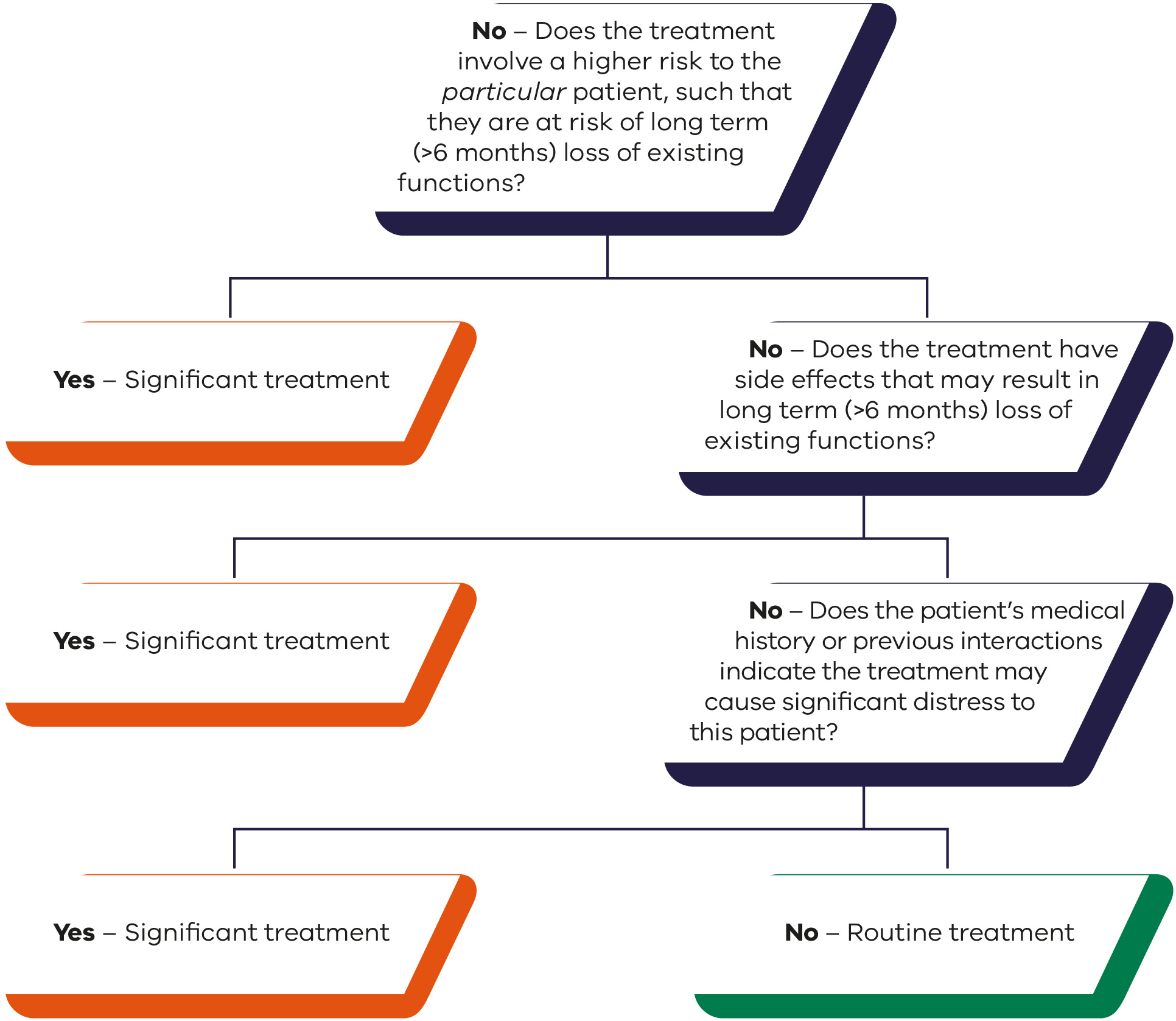
If treatment is routine, the health practitioner may proceed without consent but must record this decision in the person’s clinical record.

If a treatment is ongoing, the health practitioner may record the period over which it is provided in the medical record once.

The health practitioner must record any changes in circumstances that lead to reconsideration as to whether treatment is routine or significant.

If a medical treatment decision maker has refused medical treatment, and the health practitioner considers that the consequences of the refusal are significant and the health practitioner reasonably believes the preferences and the person’s values are not known or are unable to be known or inferred, the health practitioner must notify the Public Advocate. The Public Advocate will determine whether this refusal was reasonable.If the treatment is not listed in the examples, use the flowchart below to determine whether the treatment is significant or routine. **If the treatment is significant, consent must be obtained from the Public Advocate.**

Figure 6: Mental health treatment decision-making pathway



# Appendix 1: Descriptive text for figures

## Figure 1: Surgical treatments decision-making pathway

See [Section 1: Surgical treatments](#_Section_1:_Surgical) for more information.

**Question one**: does the treatment involve a subcutaneous incision, other than with a needle?

* If yes, the treatment is significant (end).
  + If no, consider question two.

**Question two**: does the treatment involve a risk of death or serious injury higher than 0.1 per cent?

* If yes, the treatment is significant (end).
  + If no, consider question three.

**Question three**: does the treatment involve a higher risk to the particular patient, such that they are at risk of long term (greater than six months) loss of existing functions?

* If yes, the treatment is significant (end).
  + If no, consider question four.

**Question four**: does the treatment have side effects that may result in long term (greater than six months) loss of existing functions?

* If yes, the treatment is significant (end).
  + If no, consider question five.

**Question five**: does the patient’s medical history or previous interactions indicate the treatment may cause significant distress to this patient?

* If yes, the treatment is significant (end).
  + If no, the treatment is routine.

## Figure 2: Physical (including allied health) treatment decision-making pathway

See [Section 2: Physical (including allied health) treatment](#_Section_2:_Physical) for more information.

**Question one**: does the treatment involve a risk of death or serious injury higher than 0.1 per cent?

* If yes, the treatment is significant (end).
  + If no, consider question two.

**Question two**: does the treatment involve a higher risk to the particular patient, such that they are at risk of long term (greater than six months) loss of existing functions?

* If yes, the treatment is significant (end).
  + If no, consider question three.

**Question three**: does the treatment have side effects that may result in long term (greater than six months) loss of existing functions?

* If yes, the treatment is significant (end).
  + If no, consider question four.

**Question four**: does the patient’s medical history or previous interactions indicate the treatment may cause significant distress to this patient?

* If yes, the treatment is significant (end).
  + If no, the treatment is routine.

## Figure 3: Pharmaceutical treatment decision-making pathway

See [Section 3: Pharmaceutical treatment](#_Section_3:_Pharmaceutical) for more information.

**Question one**: does the treatment involve a risk of death or serious injury higher than 0.1 per cent?

* If yes, the treatment is significant (end).
  + If no, consider question two.

**Question two**: does the treatment involve a higher risk to the particular patient, such that they are at risk of long term (greater than six months) loss of existing functions?

* If yes, the treatment is significant (end).
  + If no, consider question three.

**Question three**: does the treatment have side effects that may result in long term (greater than six months) loss of existing functions?

* If yes, the treatment is significant (end).
  + If no, consider question four.

**Question four**: will the treatment cause ongoing nausea, drowsiness, dullness of thinking etc., such that the person could not function in daily life?

* If yes, the treatment is significant (end).
  + If no, consider question five.

**Question five**: does the patient’s medical history or previous interactions indicate the treatment may cause significant distress to this patient?

* If yes, the treatment is significant (end).
  + If no, the treatment is routine.

## Figure 4: Dental treatment decision-making pathway

See [Section 4: Dental treatment](#_Section_4:_Dental) for more information.

**Question one**: does the treatment involve procedures with a risk of death or serious injury (for example nerve damage following wisdom tooth extraction)?

* If yes, the treatment is significant (end).
  + If no, consider question two.

**Question two**: does the treatment involve a higher risk to the particular patient, such that they are at risk of long term (greater than six months) loss of existing functions?

* If yes, the treatment is significant (end).
  + If no, consider question three.

**Question three**: does the treatment have side effects that may result in long term (greater than six months) loss of existing functions?

* If yes, the treatment is significant (end).
  + If no, consider question four.

**Question four**: does the patient’s medical history or previous interactions indicate the treatment may cause significant distress to this patient?

* If yes, the treatment is significant (end).
  + If no, the treatment is routine.

## Figure 5: Investigative and diagnostic decision-making pathway

See [Section 5: Investigative and diagnostic](#_Section_5:_Investigative) for more information.

**Question one**: does the treatment involve a risk of death or serious injury higher than 0.1 per cent?

* If yes, the treatment is significant (end).
  + If no, consider question two.

**Question two**: does the treatment involve a higher risk to the particular patient, such that they are at risk of long term (greater than six months) loss of existing functions?

* If yes, the treatment is significant (end).
  + If no, consider question three.

**Question three**: does the treatment have side effects that may result in long term (greater than six months) loss of existing functions?

* If yes, the treatment is significant (end).
  + If no, consider question four.

**Question four**: does the patient’s medical history or previous interactions indicate the treatment may cause significant distress to this patient?

* If yes, the treatment is significant (end).
  + If no, the treatment is routine.

## Figure 6: Mental health treatment decision-making pathway

See [Section 6: Mental health treatment](#_Section_6:_Mental) for more information.

**Question one**: does the treatment involve a higher risk to the particular patient, such that they are at risk of long term (greater than six months) loss of existing functions?

* If yes, the treatment is significant (end).
  + If no, consider question two.

**Question two**: does the treatment have side effects that may result in long term (greater than six months) loss of existing functions?

* If yes, the treatment is significant (end).
  + If no, consider question three.

**Question three**: does the patient’s medical history or previous interactions indicate the treatment may cause significant distress to this patient?

* If yes, the treatment is significant (end).
  + If no, the treatment is routine.