

HSCC 330 Legal and Legislative Aspects of Health Care

Patient Consent & Refusal

Objectives

- Upon completion of this section, the student should be able to:
 - define consent
 - identify the types of consent
 - identify the elements of consent
 - identify steps in patient refusal of treatment
 - define abandonment

Patient Consent

- Necessary for treatment
- Patient has rights

Consent

- A voluntary agreement by a patient who is both legally and mentally capable of making decisions regarding treatment and transport

Types of Consent

- Informed
- Expressed
- Implied

Informed Consent

- Consent is informed when it is voluntary and based on an understanding of the nature, risks, and alternatives of the procedure or treatment being performed, along with the possible consequences of refusing the treatment or procedure

Expressed Consent

- A patient specifically agrees to treatment, either orally or in writing
- The patient “expresses” consent to be treated

Implied Consent

- Results from the circumstances of the particular case or status of the patient

Implied Consent in the Field

- Circumstantial
- Incompetent Patients
- Minors

Elements of Consent

- Legal Capacity
- Mental Capacity
- Information-based Consent

Legal Capacity

- Legally qualified to give consent
- Generally, every person is presumed to be qualified to give consent

Exceptions to Legal Capacity

- Guardianships
 - court-appointed guardian or trustee
- Minors
- Exceptions to Parental Consent
 - Emergencies
 - Emancipated Minors

Mental Capacity

- Competence
- State of mind
- Every competent person has the absolute right to consent to or refuse medical intervention

Information-based Consent

- Patient needs to be provided sufficient information to make an informed choice regarding treatment
 - nature of condition
 - treatment
 - risks
 - consequences of refusing
 - alternatives

Treatment Without Consent

- Potential for civil and criminal liability
- Civil
 - medical assault and battery
 - false imprisonment
- Criminal
 - assault and battery
 - unlawful imprisonment

Prisoners in Custody

- If competent, prisoner does not lose right to make decisions regarding medical treatment

Treating Without Consent

- Patient must be able to exercise mental ability to make a decision
- A true emergency must exist

Refusal of Treatment

- Patients with the right to consent have the corresponding right of refusal
- Steps
 - release form
 - ask again
 - ask family member to seek consent
 - call personal physician
 - document, document, document

Release Forms

- Educate
- Encourage
- Document

Abandonment

- The unilateral severance of the provider-patient relationship without the consent of the patient

Formation of the Provider-Patient Relationship

- Depends on the facts and circumstances of the particular case

Termination of the Provider-Patient Relationship

- Three ways:
 - medical care not required
 - patient terminates the relationship
 - patient transferred