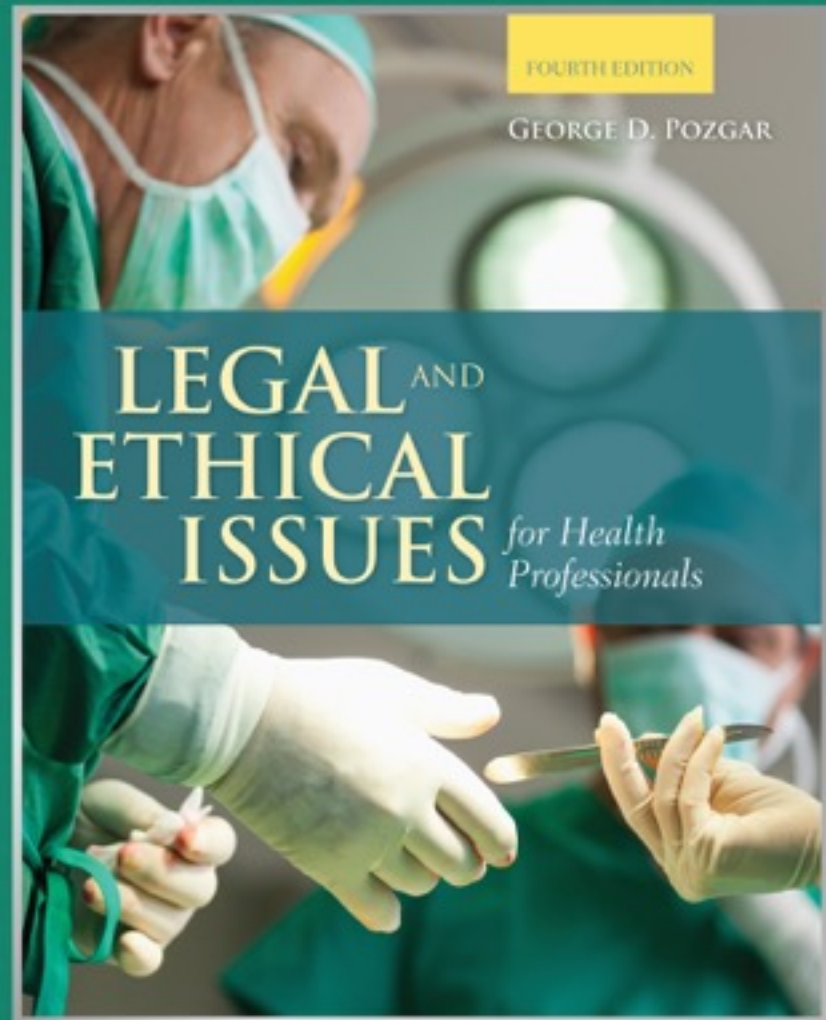


Chapter 12

Patient Consent



Learning Objectives – I

- Discuss informed consent and how it applies the patient's right to self-determination.
- Describe how various codes of professional ethics address a patient's right to informed consent and self-determination.
- Explain and give examples of verbal, written, and implied consent.

Learning Objectives – II

- Describe under what circumstances statutory consent can be inferred.
- Describe how caregivers can determine a patient's capacity to consent and what action should be taken if the patient is unable to consent to recommended care choices.
- Describe what factors the courts could take into consideration when determining the adequacy of consent.

Learning Objectives – III

- Explain why a patient has a right to refuse treatment.
- Understand the importance of state interests when a parent refuses life saving treatment for a child.

Consent

- The voluntary agreement by a person who possesses sufficient mental capacity to make an intelligent choice to allow something proposed by another to be performed.

. . . no right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person.

– Union Pacific Ry. Co. v. Botsford

Express Consent

- *Express consent*: a verbal or written agreement authorizing treatment.

Implied Consent – I

- *Implied consent*: a presumption that consent has been authorized based on the nature of the patient's condition.
 - Determined by some act or silence, which raises a presumption that consent has been authorized.
 - Unconscious patients are presumed under law to approve treatment.
 - Comatose state due to multiple injuries
 - Document the medical necessity for proceeding with medical treatment without consent.

Informed Consent – II

- Legal concept that provides that a patient has a right to know potential risks, benefits, and alternatives of a proposed treatment.
- Requires that a patient have a full understanding of that to which he or she has consented.
- Any glimmer of uncertainty as to a patient's desires in an emergency situation should be resolved in favor of preserving life.

Consent and Ethical Codes – I

- **AMA Code of Medical Ethics**
 - Patient has the right to receive information from physicians and to discuss the benefits, risks, and costs of appropriate treatment alternatives.
- **ADA Code of Ethics**
 - “Dentist has a duty to respect the patient’s rights to self-determination and confidentiality . . .”

Consent and Ethical Codes – II

- ANA Code of Ethics
 - Patients have the moral and legal right to determine what will be done with their own person.

Proof of Consent

- Oral consent
- Written consent
- Implied: emergency consent

Written Consent Should Include – I

- Nature of the patient's illness or injury
- Name of proposed procedure or treatment
- Purpose of proposed treatment
- Risks and probable consequences of proposed treatment
- Probability proposed treatment will be successful

Written Consent Should Include – II

- Alternative methods of treatment including associated risks and benefits
- Risks and prognosis if no treatment is rendered
- Indication patient understands nature of proposed treatment, alternatives, risks involved, and probable consequences of proposed treatment
- Signatures of patient, physician, and witnesses
- Date the consent is signed

Statutory Consent

- An emergency in most states eliminates the need for consent.
- When a patient is clinically unable to give consent to a lifesaving emergency treatment, the law implies consent.
 - Case: Patient Emergency—Favor Preserving Life

Matter of Hughes

- Patients have an obligation to make medical preferences known.
 - Includes course to follow, if life-threatening complications arise.
- Protects patient's right to freedom of religion and self-determination.

Capacity to Consent – I

- Clinical assessment of decision-making capacity should include the patient's ability to
 - Understand the risks, benefits, and alternatives of a procedure.
 - Evaluate the information provided by the physician.
 - Voluntarily make decisions regarding his or her treatment plan without undue influence by family, friends, or medical personnel.

Capacity to Consent – II

- Before declaring individual incapacitated, attending physician must
 - Determine with reasonable degree of medical certainty that the patient lacks capacity.
 - Make a notation in the medical record describing the reason for incapacity.

Adequacy of Consent

- Provide as much information about treatment options as necessary based on
 - A patient's personal understanding of the physician's explanation of the risks of treatment
 - The probable consequences of the treatment
 - The needs of each patient can vary depending on age, maturity, and mental status.

Failure to Inform – I

A patient underwent a mastectomy only to learn that a less destructive alternative procedure was available in a region near her home. The procedure, a lumpectomy, has the same survival rate as a mastectomy. The patient claims the surgeon never informed her about the alternative.

Failure to Inform – II

- Describe the ethical and legal issues in failing to discuss alternative treatments with a patient.
- Should a physician describe every possible alternative treatment procedure with his or her patient? Explain your answer.

Who May Authorize Consent

- Competent adult patients
- Spouse
- Guardian
- Parents of minor

Competent Patient

- When there is no compelling state interest that justifies overriding an adult patient's decision, that decision should be respected.
- State interests include:
 - Preserving life
 - Preventing suicide
 - Safeguarding the integrity of the medical profession
 - Protecting innocent third parties

Spouse

Case: Greynolds v. Kurman

- Consulting physician ordered a cerebral angiogram.
 - Patient a major risk for invasive procedure
- Patient suffered a stroke during the procedure.
- Malpractice action filed.
- Evidence supported judgment for lack of *informed consent*.

Parental Consent

- Parents generally have right to authorize medical care for minor children.
- Consent laws vary state to state.
- Parents have right to refuse medical care but refusal can be reported by caregiver to state if refusal can cause harm to child.

Parents Refuse Emergency Treatment – I

- Parents refused to consent to care for their minor child based on religious convictions.
- Trial court appointed hospital as temporary guardian.
- District Court was confronted with task of balancing competing interests of child, parents, hospital, and State.
- District Court appointed hospital as temporary guardian.
- Supreme Court of Nevada affirmed order of District Court appointing Valley Hospital as temporary guardian.

Parents Refuse Emergency Treatment – II

- Discuss the legal implications of this case.
 - For example, states' rights
- Discuss the ethical issues of this case.
 - For example, beneficence

Parents Refuse Blood to Patient with Multiple Trauma – I

The parents of a 6-year-old child with multiple trauma refuse to consent for the administration of blood. The emergency department physician informs the parents that such refusal will most likely result in the death of the child.

Discuss the legal and ethical issues.

Parents Refuse Blood to Patient with Multiple Trauma – II

- Legal issues
 - Parents' rights
 - State interests
- Ethical issues
 - Autonomy
 - Child's rights
 - Beneficence (to do good)
 - Nonmaleficence (first, to do no harm)

Consent by Minors

- Parental consent not necessary when minor is emancipated.
- Consent of minor can be ineffective.
 - Physician should secure consent of minor's parent if time allows.
- Treatment should not be delayed to detriment of child.

Incompetent Patients

- The mentally incompetent patient cannot legally consent to treatment.
- Consent of legal guardian or next of kin should be obtained.
- If no relative or legal guardian available, court must be petitioned to permit treatment.

Guardian

- Individual who by law is invested with the power of consent and charged with the duty of protecting the patient's rights and managing the patient's estate.
- A patient is considered incapable of managing or administering his or her private affairs due to
 - Physical and/or mental disabilities
 - Under the age of majority

Right to Refuse Treatment

- Patients have the right to refuse medical care, including any nonconsensual touching.
- Competent adult patient has right to decline any and all forms of medical intervention.
 - Includes lifesaving or life-prolonging treatment.

The individual's right to make decisions vitally affecting his private life according to his own conscience . . . is difficult to overstate . . . because it is, without exaggeration, the very bedrock on which this country was founded.

– WONS v. Public Health Trust

Every human being of adult years and sound mind has a right to determine what shall be done with his own body, and a surgeon who performs an operation without his patient's consent commits an assault, for which he is liable in damages, except in cases of emergency where the patient is unconscious and where it is necessary to operate before consent can be obtained.

– Justice Cardozo, *Schloendorff v. Society of New York Hospital*

Why Treatment Is Refused

- Grounded in lack of confidence in the physician?
- Due to fear of the procedure?
- Doubt as to the value of a procedure?
- Based on mere whim?

State Rights Can Override Patient Rights

- When a competent adult refuses treatment, the court may be asked to determine whether state interests override a patient's rights, including:
 - Preservation of life
 - Protection of third parties
 - Prevention of suicide
 - Integrity of the medical profession

Right to Refuse Treatment

- In *In re Fetus Brown*, the State of Illinois asserted that its interest in the well-being of a viable fetus outweighed the patient's rights to refuse medical treatment.
- The state argued that a balancing test should be used to weigh state interests against patient rights.
- The appellate court held that it could not impose a legal obligation upon a pregnant woman to consent to an invasive medical procedure for the benefit of her viable fetus.

Florida District Court of Appeal

- Health care providers must comply with the wishes of a patient to refuse medical treatment unless ordered to do otherwise by a court.
- A health care provider cannot act on behalf of the state to assert state interests.
- When a health care provider, acting in good faith, follows the wishes of a competent and informed patient to refuse medical treatment, the health care provider is acting appropriately and cannot be subjected to civil or criminal liability.

Mother Refuses Treatment Spouse Agrees

- What would you do when a patient refuses a blood transfusion and the spouse agrees with her decision, knowing that a blood transfusion may be necessary to save her life?
- Should a hospital challenge a patient's refusal of lifesaving blood transfusions?

Blood Refusal: Competent Adult

Mrs. Smith, a mother of three, refuses a blood transfusion that is considered necessary by a trauma team to save her life.

Discuss the legal and ethical issues.

Legal and Ethical Issues

- Legal issues
 - Informed consent
- Ethical issues
 - Autonomy (right to make own decisions)
 - Beneficence (to do good)
 - Nonmaleficence (first, to do no harm)
 - Impact on caregivers
 - Professional codes of ethics

Blood Refusal: Spouse Disapproves

Mr. Smith refuses a blood transfusion necessary to save his life. Mrs. Smith wishes to override her husband's signed informed consent. The spouse is now in a comatose state.

Discuss the legal and ethical issues.

REVIEW QUESTIONS

- Discuss informed consent and how it applies the patient's right to self-determination.
- Describe what information the patient should be provided prior to consenting to a recommended treatment.
- Describe how various codes of professional ethics address a patient's right to informed consent and self-determination.

REVIEW QUESTIONS, cont'd

- Explain and give examples of verbal, written, and implied consent.
- Describe purpose of statutory consent.
- Describe under what circumstances statutory consent to treatment can be inferred.
- Discuss why is it important to assess a patient's decision-making capacity.

REVIEW QUESTIONS, cont'd

- Describe factors courts could take into consideration when determining adequacy of consent.
- Can a patient give consent and then withdraw it?
 - Discuss your answer.
- Explain why a patient has a right to refuse treatment.