STANDARD PRACTICE

Date: April 1978


Title: GUIDELINES FOR OBTAINING CONSENTS FOR ELECTIVE AND EMERGENCY PROCEDURES

Policy: Each patient must provide his own consent unless he is a minor or is unable to make or communicate his treatment decision. A minor child’s consent form must be signed by a parent or legal guardian, except as specified below. The consent of the patient, or someone consenting on behalf of the patient, may be indicated by signature on a consent form, or by appropriate documentation by the physician in the progress notes.

Procedure:
The following guidelines must be followed to ensure that permission is obtained from the person who is legally recognized as the patient’s representative and that permission is documented.

I. For every adult admitted to the hospital, an inquiry shall be made as to whether that person has designated someone to act as his “health care surrogate” to make treatment decisions for him/her in the event he is not able to make or communicate his treatment decisions. If the patient has designated a “health care surrogate,” the name, address, and telephone number of the health care surrogate shall be entered in the patient’s record. NOTE: Patients are not required to designate a health care surrogate.

II. Obtaining consent for care of minors:
A. The parent or legal guardian must sign consent to treat a minor, being sure to indicate their relationship to the patient.
B. When a Minor Can Consent
   1. Emancipated minors may consent in the same manner as an adult. For purposes of this Standard Practice, emancipated minors include:
      a. Anyone who is not yet 18 years old, but is legally married or who is a parent.
      b. Anyone who is not yet 18 years old, but has been legally married and is now divorced, or a widow or widower.
c. Anyone who is not yet 18 years old, but is maintaining own residence and is self-supporting. **A reasonable effort to contact parents must be made.** If a parent can be contacted, consent should be obtained from the parent.

d. Any minor who is pregnant.

e. Any minor declared to be an adult by a court of law.

f. Any minor under the custody of the State Department of Corrections.

g. Anyone over the age of 17 may consent to donation of blood, unless there is a known objection by the parent or guardian.

h. Any minor may consent, without parental notification or approval, to voluntary substance abuse impairment treatment. (Note: A parent or guardian may not consent to elective sterilization of a minor. A court order is required. See the standard practice titled “Sterilization”.

2. A minor 13 years of age or older may consent to outpatient diagnostic and evaluation services, and outpatient crisis intervention, therapy and counseling services if they feel that they have suffered an emotional crisis that requires professional assistance. The treatment **cannot** include medication or other somatic methods, adverse stimuli, or substantial deprivation, and **cannot** exceed two visits per week. However, the outpatient crisis intervention, therapy and counseling services can include psychotherapy, group therapy, counseling, or other forms of verbal therapy provided by a licensed mental health professional.

The purpose of outpatient diagnostic and evaluation services are to determine the severity of the problem and the minor's potential to harm him/herself or others if professional services are not provided.

Under this section, a licensed mental health professional has the right to refuse services to minors. However, parental participation may be included, if service is provided and the mental health professional or facility finds it appropriate.

3. A minor may consent to examinations and treatments for sexually transmitted diseases. These examinations and treatments must be performed by a Board licensed allopathic or osteopathic physician, or a Board licensed registered nurse or practical nurse who is qualified to provide the minor with the appropriate treatment.

C. Care for Minors

1. When a parent or legal guardian cannot be located after reasonable documented efforts, ordinary and necessary medical and dental treatment, blood testing, immunizations, tuberculin testing, and “well child” care may be consented by:

   a. A person with power of attorney to consent to care of the child
   b. A step-parent
   c. A grandparent
   d. Adult brother or sister
   e. Adult aunt or uncle

2. DCF or the Department of Juvenile Justice may consent to routine care of a child committed to its custody.
3. In all instances, good faith reasonable efforts shall be made to contact the parent or legal guardian before rendering care.

4. If there is a known objection from the parent or legal guardian, the hospital shall not accept the consent of a different party under this Section.

5. The scope of care permissible under the Section without the consent of the parent or legal guardian does not include: HIV testing, drug testing, surgery, general anesthesia, psychotropic medications, abortion or sterilization.

6. A parent of a minor may give a power of attorney to another adult to provide medical consent for the minor. The power of attorney must have been executed after July 1, 2001, and must state that it includes the ability to provide medical consent for the minor. Such a power of attorney will include the ability to consent to medically necessary surgical and general anesthesia services for the minor unless such services are excluded.

III. Rescinding/Revoking Consent

A. Any patient or decision maker (proxy) who has previously consented to any treatment and/or procedure, may, at any time prior to the administration of said treatment and/or procedure, revoke that consent either verbally or in writing.

B. If a patient or proxy who has previously consented to a treatment or procedure verbalizes indecision concerning the consent, the patient or proxy should be asked directly if he or she desires to revoke the consent. If the patient or proxy wishes to revoke consent for a treatment or procedure, staff should immediately document diagonally across all sides of the previously signed consent: “Revoked”. Further documentation must include date, time, and signature of staff member. The clearly marked revoked consent form remains a part of the medical record. If the patient or proxy later decides to proceed with the treatment and/or procedure, a new consent form should then be obtained.

C. Any discussions between staff and the patient/proxy regarding rescinding/revoking of consent, and/or clarification of the patient’s wishes, should be documented in the medical record.

IV. Lacking Mental or Physical Capacity to Consent

A. Any patient who understands the content of the consent form, but is unable to sign his name:
   1. May mark the consent form with an “X” or such other mark as the patient intends to represent his signature, and this must be witnessed by two (2) witnesses, preferably Nursing Department employees, and dated.
   2. A completed “Certificate of Attestation” form must accompany the consent form, #861-1052. The Certificate of Attestation form should list the applicable consent forms.
B. 1. If a patient's judgment becomes so affected by a physical or medical condition that he lacks the ability to communicate a willful and knowing decision about his care, this finding shall be documented in the medical record by the attending physician. If the first physician has a question about the patient's capacity, there shall additionally be documentation of lack of capacity by a concurring physician.

2. Consent for medical care on such a patient shall be given by the highest ranking of the following individuals, in accord with the following order of precedence:

i. A judicially appointed legal guardian of the person of the patient who has been authorized by the court to consent to medical treatment. A copy of the guardian's Letters of Guardianship shall be added to the patient's medical record. Where there is doubt as to whether the Letters of Guardianship include authority to consent to medical treatment, the Hospital Attorney shall be consulted. The term "guardian" includes "guardian advocates" for persons with developmental disabilities appointed under Chapter 393, Fla. Stat. For Memorial Regional Hospital, for patients receiving mental health treatment, Guardians include Guardian Advocates under Ch. 394, Fla. Stat.

ii. A health care surrogate specifically designated in writing by the patient to make medical decisions on behalf of the patient. The patient's signature on the document appointing a health care surrogate must be witnessed by at least two people, one of whom is not the patient's spouse, a blood relative, nor the person appointed to act as the health care surrogate.

iii. The patient's spouse.

iv. An adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation.

v. A parent of the patient.

vi. An adult sibling of the patient, or if the patient has more than one sibling, a majority of the adult siblings who are reasonably available for consultation.

vii. An adult relative of the patient who has exhibited special care and concern for the patient and who has maintained regular contact with the patient, and who is familiar with the patient's activities, health, and religious or moral beliefs.

viii. An adult close personal friend of the patient who has exhibited special care and concern for the patient who presents an affidavit, signed and notarized under oath, stating that he or she is a close personal friend of the patient, is willing and able to become involved in the patient's health care, and has maintained such regular contact with the patient so as to be familiar with the patient's activities, health and religious or moral beliefs. Hospital form #861-1293-1-93 may be used.

ix. If a health care decision maker (proxy) cannot be found from persons listed above, a clinical social worker licensed pursuant to
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Chapter 491, or who is a graduate of a court approved guardianship program may act as health care decision maker (proxy). Efforts to locate persons listed above shall be documented in the patient's medical record. This clinical social worker must not be an MHS employee and must be approved by the MHS Ethics Committee. Upon the request of a clinical social worker approved by the MHS Ethics Committee to act as healthcare proxy, MHS shall make available an additional physician not involved in the patient's care to assist the clinical social worker in evaluating treatment. A decision to withhold or withdraw life prolonging procedures must be reviewed by the MHS Ethics Committee.

3. The persons designated above may not consent to:
   i. Abortion
   ii. Sterilization
   iii. Electroshock Therapy
   iv. Psychosurgery
   v. Experimental treatments or therapies, except as approved by a federally approved institutional review board in accordance with 45 C.F.R., part 46.
   vi. Voluntary admission to a mental health facility.
   vii. Withholding or withdrawing life prolonging procedures, unless the patient is terminally ill, suffers from an end stage condition, or is in a persistent vegetative state, and the health care surrogate qualifies to make such decisions for the patient under standard practice titled, "Resuscitation and Termination of Life Prolonging Procedures Policy".

4. If the attending physician determines that the patient has regained the capacity to make health care decisions or provide informed consent, the appointment of the health care surrogate will cease, and the patient shall assume responsibility for his health care decisions.

5. If there is a conflict between the patient's advance directive and the surrogate or proxy, or conflicts between proxies, then the physician or designee should provide guidance to the surrogate or proxies as to the standards for they should be following for making decisions about the patient's care. The decision should be based on clear and convincing evidence (prior written or verbal statements) of what the patient's wishes would be. Such evidence should be documented in the patient's medical records. If there is no indication of what the patient would have chosen, the decision shall be based on what is in the patient's best interest.

6. If there is no person to act as healthcare surrogate or proxy, and if delay in treatment will not result in harm to the patient, the matter shall be referred to the Administrator-on-Call and the Hospital Attorney.
V. **Emergency Procedures:** An emergency condition is a condition which could result in death or in permanent damage or impairment if treatment or medical intervention is delayed.

A. Whenever possible, the procedure described in Section I, above, should be followed. If an emergency condition exists, as defined above, care may be rendered without the patient’s informed consent, if:

1. The patient is incompetent, intoxicated, under the influence of drugs, unconscious, or unresponsive, to the extent of not being able to provide informed consent as determined in accord with Section III (B) above; **OR**

2. The patient is a minor and the parent or legal guardian or other legally authorized decision maker is not reasonably available; **AND**

3. The patient would reasonably, under all surrounding circumstances, consent to examination and treatment after being given all information needed to give informed consent (listed in Section IV, above).

4. **For emergency surgical treatment of a patient admitted for mental health treatment (Baker Act), the administrator on call shall be notified.** Under Ch. 394, Fla. Stat. (The Baker Act), the administrator may authorize emergency surgical treatment upon the recommendation of the patient’s attending physician if the surgical treatment is deemed lifesaving, or if the situation threatens serious bodily harm to the patient and permission of the patient or the patient’s guardian or guardian advocate can not be obtained.

B. The surgeon/physician must deem the treatment or procedure immediately necessary to prevent serious permanent damage, injury or impairment. This should be documented in the progress notes. Wherever practical, it should be documented by one additional physician. Guidance/instructions from the Administrator-on-Call and Hospital Attorney should be obtained whenever possible.

C. Care given without informed consent, when permitted above, shall be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency condition or to stabilize the patient.

VI. **Information:** The attending physician, any consulting physician, and other professional personnel (within the scope of their knowledge and licensure) shall provide the health care surrogate with information sufficient to enable him to make informed health care decisions for the patient. The health care surrogate’s right to consultation and cooperation is equal to that of the patient. This information includes:

A. The diagnosis
B. The prognosis
C. The possible risk versus benefits of treatment
D. The side effects of medication
E. The financial impact of proposed treatment
F. The likely outcome of a refusal to consent
G. The alternatives.
VII. Sterilization requires specific consent, which cannot be given by a surrogate. A Medicaid or Indian Health Service patient requesting sterilization must meet certain additional requirements. See standard practice, "Sterilization".

VIII. Consent to investigational drugs or devices under FDA guidelines must be in writing prior to use of the drug or device.

IX. Telephone consents:
A. When the next of kin or legal representative cannot come to the hospital, verbal telephone consent must be witnessed by two witnesses, preferably Nursing Department employees, and should be followed by a telegram or other written material. This written confirmation should be sent to the Nursing Office and should include:
   1. Name of patient
   2. Procedure to be performed
   3. Name(s) of physician(s) to perform procedure
   4. Name and relationship of person granting permission. The telegram is to be placed on the chart of the appropriate patient.
B. Written authorization may be transmitted via Fax or e-mail, mail, or other delivery, which document will be made part of the medical record.

X. If the above-mentioned conditions for consent are not satisfied, or there is some question, the Nurse Manager or Administrative Supervisor will contact the Administrator-on-Call for guidance. The Administrator-on-Call will, whenever he/she deems it necessary, consult with the Hospital Attorney.


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