

HEALTH SCIENCE CENTER HANDBOOK OF OPERATING PROCEDURES

Chapter 11	Patient Privacy Policies	Effective:	April 2003
Section 11.1	General and Oversight Policies	Revised:	February 2006
Policy 11.1.7	Patient Consent and Authorization—Basic Requirements	Responsibility:	Assistant Vice President for Regulatory Affairs & Compliance

PATIENT CONSENT AND AUTHORIZATION—BASIC REQUIREMENTS

Policy

The Health Science Center will obtain appropriate patient or patient representative consent prior to providing treatment, in accordance with state and federal law.

Definitions

ADULT: A person 18 years of age or older, or a person 17 years of age or younger who is authorized by law to consent to medical treatment.

MINOR: A person under the age of 18 who has not been legally emancipated by a court and who is not and has not been married or who has not had disabilities of minority removed for general purposes.

DECISION-MAKING CAPACITY: The ability to understand and appreciate the nature and consequences of a decision regarding medical treatment, and having the ability to reach an informed decision in the matter.

EMANCIPATED MINORS: Persons under the age of 18 who are legally emancipated by the court and able to provide their own consent for treatment.

INCAPACITATED: Lacking the ability based on reasonable medical judgment, to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits, risks, complications, and reasonable alternatives to any proposed treatment.

MEDICAL TREATMENT: A health care treatment, service, or procedure designed to maintain or treat a patient's physical or mental condition, including preventive care.

PERSONAL REPRESENTATIVE: An individual with decision-making capacity that is identified as the person who has authority to consent to medical treatment on behalf of a patient in need of medical treatment. This includes an individual who has authority by law or by agreement from the individual receiving treatment, to act in the place of the

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individual. This includes parents, legal guardians or properly appointed agents, such as identified in a “Durable Power of Attorney”.

Consent to Treat

Before care is rendered, a consent form specific to the individual school, department, division, and/or procedure will be completed and signed by the patient or person authorized to consent on behalf of the patient. This consent form should be considered valid for the duration of the course of treatment.

The duty to obtain the consent of the patient for medical procedures rests with the physician or dentist and other authorized clinicians. The consent form serves as a written confirmation of the patient's consent. Staff may give the form to the patient for signature and assist the patient with understanding the procedure or treatment, but staff are not authorized to explain the procedure in lieu of the physician or dentist. A consent form is not a substitute for discussion of the procedure and actual consent between the physician/dentist and the patient.

If the patient, or authorized person, communicates to the staff member that she/he does not understand the nature of the procedure or treatment, has additional questions, or second thoughts, signature should not be obtained. Staff should immediately notify the physician/dentist that the form has not been signed and additional information or further explanation is required.

The consent form may not be signed by any patient who has received a sedative, unless the physician/dentist has documented in the progress notes that the patient was informed of the procedure prior to the sedation and was capable of fully understanding the procedure.

If a procedure is completed at an affiliated organization, that organization's consent form may be used in lieu of the Health Science Center forms.

Incapacitated Adults

If an adult is comatose, incapacitated, or otherwise mentally or physically incapable of communication and the patient does not have a legal guardian or has not designated a durable power of attorney for

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health care, an adult from the following list, in the order of priority as listed, may consent to treatment on behalf of the patient.

1. The patient's spouse;
2. An adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as sole decision-maker;
3. A majority of the patient's reasonably available adult children;
4. The patient's parents;
5. The individual clearly identified to act for the patient, by the patient, before the patient became incapacitated; or,
6. The patient's nearest living relative.

The person must: 1) have decision-making capacity; 2) be available to serve as a patient representative after a reasonably diligent inquiry; and, 3) be willing to consent to medical treatment on behalf of the patient. A patient representative cannot consent to the appointment of another patient representative.

Consent by a Personal Representative

If an adult patient is incapacitated or otherwise mentally or physically incapable of communication and, according to reasonable medical judgment, is in need of medical treatment, the attending physician/dentist will document the patient's incapacity in the patient's health record.

The physician/dentist will make a reasonable, diligent effort to contact, or cause to be contacted, the persons eligible to serve as patient representatives. Efforts to contact those persons will be included in the patient's health record.

If a patient's personal representative consents by telephone, the attending physician/dentist shall record in the progress notes the date and time consent was given and by whom, including relationship to the

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patient. The patient representative will countersign the consent as soon as possible.

Consent for Minors

The parent(s) of a minor is normally expected to, and has the authority to, make medical decisions for the minor.

When the person who otherwise has the authority to consent cannot be contacted, any of the following persons, listed in order of priority, may consent to medical treatment of the minor:

1. A grandparent;
2. An adult brother or sister;
3. An adult aunt or uncle;
4. Any court having jurisdiction of the minor; or,
5. Any adult responsible for the care and control of the minor under the jurisdiction of a juvenile court.

The Texas Youth Commission may consent to the treatment of a minor committed to it; however, the Health Science Center will attempt to contact the parents prior to providing any treatment.

See [Section 11.1.9](#) of the *Handbook of Operating Procedures* (HOP), “Consent for Treatment of a Minor” for specifics regarding minors providing consent.

Abuse, Neglect, Endangerment Situations

The Health Science Center is not obligated to recognize an individual as the patient’s representative if it believes that it is not in the best interest of the patient, and one of the following conditions exist:

1. The patient has been or may be subjected to domestic violence, abuse, or neglect by a parent, guardian, or patient representative; or,

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2. Treating such a person as the patient’s representative could endanger the patient.
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Consent Form

The consent form should include the name of the patient; the name of the person providing consent, such as a personal representative, or conservator or guardian for a minor, and their relationship to the patient; The University of Texas Health Science Center at San Antonio name, the name of the school, division, and/or program name to adequately identify where services are to be rendered; the name of the physician, dentist, psychologist (or other professional), who will conduct or supervise the treatment; a statement of the nature of the treatment to be given; the date the treatment is to begin; and, possible risks and benefits of the treatment.

The consent form should not contain blanket statements allowing disclosure of the patient’s protected health information for any purposes otherwise not allowed by university policy or by law.

Unable to Obtain Consent

If the patient is competent and able to verbalize consent, but is unable to sign a consent form due to impaired vision, physical impairments, or illiteracy, staff will write the words "Patient Unable to Sign" and document the reason for the inability to sign on the consent form. A family member or other staff member will sign the form as a witness.

Effective Communication

On a case by case basis, a translator will be provided for those patients who do not speak English or patients who are deaf. A staff member or the patient’s relative or friend may translate. The name and relationship of anyone translating will be noted on the consent form. Patients who do not speak English or who are deaf may still sign the form after having had it explained to them in their native language, including sign language. A family member or other staff member will sign the form as a witness.

Emergency Situations

If a provider determines that the patient needs emergency treatment, consent is implied. The circumstances surrounding the treatment shall

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be specifically documented in the medical record. The guardian shall be notified as soon as possible.
