

**HACKETTSTOWN REGIONAL MEDICAL CENTER**

Division of Nursing

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TITLE: **ADDITIONAL CONSENT INFORMATION**

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1. Age of Competency:  
In New Jersey, every person 18 years of age or older, and otherwise competent, can make decisions in regard to his/her own body and the body of his issue, natural or adopted children.
  2. Emergency Consents:  
A medical emergency may eliminate the need for expressed consent. A medical emergency is one in which death or serious harm to the patient would occur without prompt medical attention. If possible, an attempt should be made to contact a relative of the patient for the purpose of obtaining a verbal consent for the procedure. This consent needs to be witnessed (heard) by two persons, recorded on the consent form as a phone/verbal consent, and the signature of the consenting person obtained (if possible). A telegram/ letter documenting consent would be acceptable.
  3. Competency for Consenting:  
A patient must be competent and informed in order to give a valid consent for a procedure. This requires that the patient have sufficient capacity to reasonably understand the diagnosis of his condition, the nature and purpose of the proposed treatment, the probability of success, alternatives to the proposed treatment, the potential risks associated with said procedure, and the prognosis if treatment is withheld. An incompetent or incapacitated person cannot give a valid consent to treatment. The following is definition of an incapacitated person: "'Incapacitated person' means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person."  
  
NOTE: No person shall be deprived of any right solely because of admission for mental health services. Psychiatric patients are considered competent to make decisions and sign consents unless they have gone to court and been declared incompetent. Mental Health Law requires that the patient, not any other person, sign consents for medical procedures and mental health procedures including electroconvulsive therapy. This holds true for voluntary and involuntary patients.
  4. Witnessing Consents:  
The consent form will be witnessed by a person over 18 years of age, not of the patient's family. The surgeon is the preferred witness since he informs the patient of the procedure. Witnesses should sign in the allocated space on the form as witness to the signature of the person signing the consent. There are no legal requirements for a witness on a consent form. However, in reality, witness is necessary to prove the validity of a signature. The exact time when the consent was evidenced in writing should be put on the consent form. The exact time can provide evidence that the patient was competent when he signed.

5. Authorized Representatives: Authorized representatives are person(s) who are legally able to give consent for treatment. In the case of a minor, it may be a parent, a guardian, a court, a government agency, attorney-in-fact, or some other person legally granted the authority to give consent. In the case of an adult, the personal representative may be an attorney-in-fact, a guardian, a court, a government agency, or some other person legally granted the authority to give consent.

If the patient is unable to give an informed consent due to the patient's mental or physical condition, the closest next of kin to the patient may give consent. "Closest next of kin" in the case of a married person is the spouse. In the case of an unmarried, widowed or divorced person, the "closest next of kin" would be the patient's adult children. Where there are no adult children, it would be the parent of the patient; and if no parents are surviving, it would be a brother or sister of the patient.

6. Persons Under Guardianship/Conservatorship/Power of Attorney:

- a. When the patient has a court appointed guardian, the guardian should sign all consents. The exception to this would be certain mental health treatments (i.e. involuntary, medication, ECT, seclusion, restraint, lobotomy) which require a court order. A certified copy of the guardianship papers should be made a part of the patient's record prior to treatment if possible. Of primary importance in the guardianship papers is the section outlining the limitations of the guardianship.
- b. A Power of Attorney may be assigned by a client to another person in a legal setting which would go into effect and remain in effect during the disability of the maker. Without such representation, the Power of Attorney is not valid upon the disability of the maker. Disability is defined as when:

A principal shall be under a disability if the principal is unable to manage his or her property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power or disappearance.

- c. Permanent Power of Attorney may or may not permit the person designated to make medical decisions on behalf of the patient. The Power of Attorney document must be read carefully to determine applicability to management of the patient's medical care. If not clear, utilize legal counsel to determine the extent of the Power of Attorney.

7. Minor Consents:

New Jersey law provides that every person 18 years of age or older, otherwise competent, can make decisions in regard to his/her own body and the body of his or her children (natural or adopted children).

- a. Married Minors:  
A married minor can give consent on his/her behalf or on behalf of any of his/her children (N.J.S.A. 9:17A-1)
- b. Unmarried Pregnant Minors:  
A pregnant minor can give consent on her behalf related to her pregnancy or her child (N.J.S.A. 9:17A-1)
- c. Deserted/Abandoned Minors:  
Upon determination that the minor has been deserted/abandoned by the parents, the health care facility should contact the County Department of Social Services to seek a court appointed guardian/conservator.

- d. Minor Not Abandoned, But Parents Not Available:  
In the absence of an emergency, only a parent can give consent. However, if the person who has custody of the child has in his/her possession a statement from the parent stating that the person can give consent, consent of custodian will be acceptable. If not, administrative consent can be obtained.
- e. Minor Placed for Adoption:  
If the child has been released by the parent for adoption, the adoption agency generally has the ability to consent if the adoption papers so stipulate. The Department of Social Services can assist in determining who has legal consent power.
- f. Foster Children Consent:  
Division of Youth and Family Services of the appropriate county is to be notified when a foster child needs consent for treatment. Foster parents are not authorized to consent.
- g. Minor With Venereal Disease:  
The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician, licensed to practice medicine, when executed by a minor who is or professes to be afflicted with venereal disease, or by a minor who, in the judgment of a treatment physician, appears to have been sexually assaulted, shall be valid and binding as if the minor had achieved his or her majority, as the case may be. Any such consent shall not be subject to later disaffirmance by reason of minority. In the case of a minor who appears to have been sexually assaulted, the minor's parents or guardian shall be notified immediately, unless the attending physician believes that it is in the best interests of the patient not to do so; however, inability of the treating physician, hospital or clinic to locate or notify the parents or guardian shall not preclude the provision of any necessary emergency medical or surgical care to the minor (N.J.S.A. 9:17A-4)
- h. Minor with Drug Addiction:
- (1) When a minor believes that he is suffering from the use of drugs or is a drug dependent person as defined in Section 2 of P.L. 1970, c 226 (C.24:21-2), his consent to treatment under the supervision of a physician licensed to practice medicine shall be valid and binding as if the minor had achieved his or her majority, as the case may be. Any such consent shall not be subject to later disaffirmance by reason of minority. Treatment for drug use or drug abuse that is consented to by a minor shall be considered confidential information between the physician and his patient, and neither the minor nor his physician shall be required to report such treatment when it is the result of voluntary consent, except as may be required by the "Controlled Dangerous Substances Registry Act of 1970," P.L. 1970, c. 227 (C.26:2G-17, et seq.).
  - (2) The consent of no other person or persons, including but not limited to a spouse, parent, custodian or guardian, shall be necessary in order to authorize such hospital or clinical care or services or medical or surgical care or services to be provided by a physician licensed to practice medicine to such a minor.
  - (3) Upon the advice and direction of a treating physician or, if more than one, any one of them, a member of the medical staff of a hospital, public clinic, or physician licensed to practice medicine, may, but shall not be obligated to, inform the spouse, parent, custodian or guardian of any such minor as to the treatment given or needed, and such information may be given to, or withheld from the spouse, parent, custodian or guardian without the consent of the minor patient and even over the express refusal of the minor patient to the providing of such information. (N.J.S.A. 9:17A-5)

- i. Minors on Active Duty with U.S. Armed Forces:  
Any minor, regardless of age, serving on active duty, may personally consent his/her medical care.
  - j. Minors Desiring to Donate Blood:  
Minors 18 years of age or older may consent to give blood.
  - k. Minor With Divorced Parents:  
Custody is key. The parent with legal custody at time consent is needed must consent. A divorce decree generally grants permanent custody to one parent and temporary custody to the other at certain times of visitation.
  - l. Conflict Between Parents Where Both Have Custody:  
Consent of one parent is all that is required. Judgment must be used to see that the best interests of the child are served.
8. Consenting for Illegitimate Children:  
In general, if the minor is legitimate, either parent can consent. If the minor is illegitimate and the father has not legitimized the minor, only the mother can consent.
  9. Consenting for Stepchildren:  
If the minor has not been legally adopted, a stepparent cannot validly consent even if the natural parent is not available.
  10. Consenting of Persons in Custody:  
In most cases, person in custody must still give consent for medical treatment. Consent for minors in custody must be obtained from parent or guardian.
  11. ETOH Blood Testing:
    - a. Police Requests
      - (1) All requests by police for ETOH testing are honored at this hospital. The officer must first obtain the consent. He then accompanies the laboratory technician to the room for the draw.
      - (2) Patient **must** be registered
      - (3) The following is the law in the State of New Jersey regarding the ETOH blood testing:
        - (a) Any person who operates a motor vehicle on any public road, street, or highway or quasi-public area in this State shall be deemed to have given his consent to the taking of samples of his breath for the purpose of making chemical tests to determine the content of alcohol in his blood; provided, however, that the taking of samples is made in accordance with the provisions of this act and at the request of a police officer who has reasonable grounds to believe that such person has been operating a motor vehicle in violation of the provisions of R.S. 39:4-50.
        - (b) A record of the taking of such sample, disclosing the date and time thereof, as well as the result of any chemical test, shall be made and a copy thereof, upon his request, shall be furnished or made available to the person so tested.

- (c) In addition to the samples taken and tests made at the direction of a police officer hereunder, the person tested shall be permitted to have such samples taken by a person or physician of his own selection.
- (d) The police officer shall inform the person to be tested of his rights.
- (e) No chemical test, as provided in this section, or specimen necessary thereto, may be made or taken forcibly and against physical resistance thereto by the defendant. The police officer shall, however, inform the person arrested of the consequences of refusing to submit to such test in accordance with section 2 of this amendatory and supplementary act. A standard statement, prepared by the director, shall be read by the police officer to the person under arrest.

- (4) If a person in the custody of the police refuses to sign a consent, patient's refusal shall be documented in the patient's chart. The specimen can still be drawn.
- (5) No physical force or restraints are allowed to be used during a draw. This is a question of degree; and if there is any doubt, refrain from the use of force.
- (6) If force is required, the test should not be taken unless a court order is obtained from a judge.
- (7) A minor can consent to have a blood sample drawn without parental permission if no force is used. If the patient refuses, parental permission is required.
- (8) Persons charged with the felony crimes of vehicular homicide or vehicular assault are not given a choice of taking either a breath test or a blood test, nor are they given the option to refuse to take a test with the option of having their license revoked.

b. Patient Request for Blood Alcohol (not legal ETOL)

- 1. The patient will have a physician's order for the test.
- 2. The patient will be classified as an outpatient.

12. Refusal of Drugs, Treatments, or Other Procedures:

- a. The right to choose treatment includes the right to refuse a specific treatment or all treatment, or select an alternative form of treatment. If the patient decides to refuse all treatments, a written informed refusal is strongly recommended to defer liability for failure to treat. It is also recommended that the refusal be documented in the chart. Psychiatric patients, whether voluntary or involuntary, have their right to refuse any treatment unless specific legal conditions are met.
- b. If the patient is refusing treatment which will probably result in the patient's death, such as refusal of insertion of a naso-gastric feeding tube or refusal of surgery for gangrene, the New Jersey Supreme Court in the Matter of Kathleen Farrell has recently established a three-prong test which must be affirmatively established:
  - (1) Is the patient mentally competent?
  - (2) Is the patient properly informed about his/her prognosis, alternative treatments and the risk involved in withdrawal of the life-sustaining treatment?

- (3) Is the patient's choice voluntary and without coercion?
- c. Two independent (non-treating) physicians must examine the patient and determine that he/she is mentally competent. Finally, it must be determined that the patient's choice is voluntary and without coercion.
  - d. Once the three issues set forth above have been affirmatively answered, then the patient's right to choose to disconnect the life-sustaining apparatus or refusal of treatment must be balanced against four potentially countervailing State interests:
    - (1) Preserving life;
    - (2) Preventing suicide;
    - (3) Safeguarding the integrity of the medical profession; and
    - (4) Protecting innocent third parties.
  - e. Generally, of the four above listed State interests, the fourth is the one that may override the competent patient's decision. The examples set forth in Farrell are where treatment is necessary to protect the public health or to prevent the emotional and financial abandonment of the patient's minor children.
  - f. If a patient refuses a blood transfusion, a blood refusal consent needs to be signed. Both anesthesia and the attending need to be notified.